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THE TOWNSHIP LAW

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P₂ 4560
1922



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PREFACE

This publication was prepared pursuant to the provisions of the Act of March 31, 1921, P. L. 81. It contains two parts, first the General Township Act of 1917, usually called the Township Code, and an Appendix containing various other legislation of interest to students of township law.

The General Township Act adopted by the General Assembly of 1917 is substantially a re-enactment of existing law relating to townships. In this act the law was arranged in a systematic manner and conflicting provisions were harmonized and language simplified. Being substantially a re-enactment of existing law, the source of the various provisions of the General Township Act is of immeasurable value to the students of this branch of the law. With this information the reader may readily ascertain the various adjudications theretofore made by the courts, and trace the history of the legislation. At the end of each section of the General Township Act notes have been added giving the source from which the provisions were originally drafted. The Code has also been annotated with all cases decided since its adoption.

The acts published in the Appendix have been arranged by chapters and have been annotated with all the leading cases. For convenience in indexing and to facilitate the use of this publication, the numerical section numbering of the General Township Act has been continued in the Appendix.

A table of cases, a table of acts and an analytical index have been added after the Appendix.

We will appreciate if the reader will call our attention to any errors or omissions.

JAMES N. MOORE,

Director.

June 1, 1922.



TABLE OF CONTENTS

THE GENERAL TOWNSHIP ACT

		Sections
Chapter	I. Preliminary Provisions, ...	1-9
Chapter	II. Classification of Townships, ...	15-16
Chapter	III. Creation of Townships, ...	20-68
	Article I. Erection of townships of the second class,.....	20-28
	Article II. Designation of townships of the first class, ...	30-34
	Article III. Re-establishment of townships of the second class, ...	35-36
	Article IV. Division of townships, ...	40-65
	Article V. Consolidation of townships, ..	66-68
Chapter	IV. Township Lines and Boundaries, ...	70-95
Chapter	V. Election of Officers; Vacancies in Office, ...	100-183
	Article I. In townships of the first class,	100-133
	Article II. In townships of the second class, ...	140-183
Chapter	VI. Township Officers, ...	190-367
	Article I. General provisions, ...	190-198
	Article II. Township commissioners, ...	210-214
	Article III. Township supervisors, township superintendent, and road masters, ...	230-241
	Article IV. Township treasurer, ...	260-287
	Article V. Township secretary, ...	300-312
	Article VI. Township auditors, ...	325-341
	Article VII. Township police, ...	355-358
	Article VIII. Tax collectors, assessors, and assistant assessors, ...	365-367
Chapter	VII. General Powers, ...	380-386
	Article I. Of townships of the first class,	380-381
	Article II. Of townships of the second class, ...	385-386
Chapter	VIII. Taxation; Finance; Road Fund, ...	390-439
	Article I. In townships of the first class,	390-406
	Article II. In townships of the second class, ...	420-439
Chapter	IX. Eminent Domain, ...	460-472
Chapter	X. Damages for Injury to Property, ...	485-488
Chapter	XI. Roads, Streets, and Highways, ...	495-846
	Article I. In townships of the first class,	495-625
	Article II. General provisions, ...	640-846
Chapter	XII. Bridges and Viaducts, ...	855-922
	Article I. In townships of the first class,	855-877
	Article II. General provisions, ...	890-922
Chapter	XIII. Sidewalks, ...	950-1042

			Sections
	Article	I. In townships of the first class,	950-1027
	Article	II. In townships of the second class, ...	1040-1042
Chapter	XIV.	Sewers and Drains, ...	1070-1141
	Article	I. In townships of the first class,	1070-1128*
	Article	II. Joint sewers, ...	1140-1141
Chapter	XV.	Contracts with Railroads and Railways, ...	1160-1165
Chapter	XVI.	Water Supply and Water Works, ...	1180-1207
	Article	I. In townships of the first class,	1180-1190
	Article	II. Construction, acquisition, and maintenance of water works in connection with boroughs, ...	1205-1207
Chapter	XVII.	Public Buildings, ...	1220-1250
	Article	I. General provisions, ...	1220-1236
	Article	II. In townships of the second class, ...	1250
Chapter	XVIII.	Licenses and License Fees, ...	1260-1281
	Article	I. General provisions, ...	1260-1271
	Article	II. In townships of the first class,	1280-1281
Chapter	XIX.	Parks, Shade-Trees, and Forests in Townships of the First Class, ...	1295-1362
	Article	I. Parks and Playgrounds, ...	1295-1317
	Article	II. Shade-tree commission, ...	1330-1341
	Article	III. Forests, ...	1355-1362
Chapter	XX.	Enforcement of Ordinances of Townships of the First Class, ...	1380-1385
Chapter	XXI.	Actions by and Against Townships, ...	1395-1401
Chapter	XXII.	Acts of General Assembly Repealed, ...	1500-1501

APPENDIX

Chapter	XXIII.	Constitutional Provisions Prohibiting Local and Special Legislation, ...	1502
Chapter	XXIV.	Creation, Consolidation and Division of Townships, ...	1503
Chapter	XXV.	Official Bonds, ...	1504-1507
Chapter	XXVI.	Police, ...	1508-1520
Chapter	XXVII.	Employees Entering Military Service of the United States, ...	1521-1523
Chapter	XXVIII.	State Association of Township Supervisors and Commissioners, ...	1524-1529
Chapter	XXIX.	Incompatible Offices, ...	1530-1533
Chapter	XXX.	Taxation, ...	1534-1638
	(a)	Certain classes of property not taxable for township purposes, ...	1534
	(b)	Assessors, ...	1535-1546
	(c)	Registration of real estate in townships of the first class, ...	1547-1549
	(d)	Appeals from assessments by townships and tax payers, ...	1550-1553
	(e)	Collection of taxes, ...	1554-1596
	(f)	Rebates for planting trees along roads and for timber land, ...	1597-1606

		Sections
	(g) Tax liens, ...	1607-1638
Chapter	XXXI. Indebtedness, Finance, Sinking Fund, ...	1639-1674
	(a) Constitutional limitation on township indebtedness, ...	1639-1643
	(b) Procedure to incur or increase township indebtedness, ...	1644-1653
	(c) Certain bonds not to be a debt of township, ...	1654-1658
	(d) Bond issues to redeem existing issues, ..	1659-1661
	(e) Townships not to become stockholders in corporations, etc., nor loan credit, ..	1662
	(f) Bonds issued to be sold to highest responsible bidder, ...	1663
	(g) Township bonds subject to taxation for State purposes, ...	1664-1667
	(h) Constitutional prohibition on assumption of township debt by Commonwealth, ..	1668
	(i) Transfer of municipal securities, ...	1669-1673
	(j) Townships to receive part of State tax on premiums of foreign fire insurances companies, ...	1674
Chapter	XXXII. Collection of Municipal Claims, ...	1675-1725
Chapter	XXXIII. Roads, Highways and Bridges, ...	1726-1924
	(a) Proceedings by viewers to lay out, open, widen, straighten, and vacate, and to fix the site of public roads and bridges. Reviewers and re-reviewers, ...	1726-1760
	(b) Damages for laying out roads in special townships. General road law to apply when special laws repealed. Review of proceedings, ...	1761-1767
	(c) Private roads, ...	1768-1775
	(d) Roads on State boundaries, ...	1776
	(e) Vacation and changing of roads, ...	1777-1795
	(f) Altering and widening of township roads connecting municipal corporations or parts thereof, ...	1796
	(g) Alteration, relocation and vacation of roads leading to parks and public grounds vested in the State, ...	1797-1801
	(h) County commissioners authorized to locate, lay out, straighten, widen, extend, alter, open, vacate, and repair certain township roads, ...	1802-1806
	(i) County to erect barriers on roads at dangerous places, ...	1807
	(j) County and township to pay one-half of the cost of improvement of roads forming dividing line between city and township located in another county, ...	1808-1810
	(k) Township authorized to assist counties in the construction and maintenance of	

		Sections
	county highways, ...	1811-1814
	(l) Turnpikes, plank roads and toll bridges, ...	1815-1819
	(m) State highways, ...	1820-1830
	(n) State-aid highways, ...	1831-1846
	(o) County and township payments for improvement and maintenance of State and State-aid highways. Incurring of indebtedness, ...	1847-1849
	(p) Closing of highways to travel. Detours, ..	1850-1851
	(q) Water troughs along highways, ...	1852-1855
	(r) Defacing sign or index boards, ...	1856-1857
	(s) Throwing glass upon highways, ...	1858-1859
	(t) Use of convict labor on roads, ...	1860-1869
	(u) Division of township highways of State Highway Department, ...	1870-1882
	(v) Bridges, ...	1883-1924
Chapter	XXXIV. Sidewalks, ...	1925-1931
Chapter	XXXV. Sewers and Drains, ...	1932-1934
Chapter	XXXVI. Motor and Other Vehicles, ...	1935-1958
	(a) Motor vehicles, ...	1935-1951
	(b) Regulations for vehicles other than motor vehicles, ...	1952-1958
Chapter	XXXVII. Fences, ...	1959-1970
Chapter	XXXVIII. Strays, ...	1971-1986
Chapter	XXXIX. Canada Thistles, ...	1987-1989
Chapter	XL. Public Buildings and Works, ...	1990-2008
	(a) State Art Commission, ...	1990-1996
	(b) Work on public buildings to be done within township, ...	1997-1998
	(c) Contractors to accept provisions of Workmen's Compensation Act, ...	1999-2001
	(d) Contractors to furnish bond to secure payment of labor and material, ...	2002-2003
	(e) Township commissioners may make regulations governing construction or repair of all buildings, ...	2004
	(f) Citizens only to be employed in work on public buildings, ...	2005-2006
	(g) Displaying flags on public buildings, ...	2007-2008
Chapter	XLI. Water Supply, ...	2009-2011
Chapter	XLII. Public Libraries, ...	2012-2040
Chapter	XLIII. Playgrounds, Playfields, Gymnasiums, Public Baths, Swimming Pools, Indoor Recreation Centers and Forests, ...	2041-2051
Chapter	XLIV. Acquisition of Land for Use of National Guard, ...	2052-2053
Chapter	XLV. Public Health, ...	2054-2104
	(a) Boards of Health in townships of the first class, ...	2054-2066
	(b) Quarantine regulations, ...	2067-2092
	(c) Maintenance of quarantined persons, ..	2093-2097

		Sections
	(d) Bone boiling establishments, depositories of dead animals, ...	2098
	(e) Rubbish and waste materials, ...	2099
	(f) Spitting in public places, ...	2100-2104
Chapter	XLVI. Licenses and License Fees, ...	2105-2112
Chapter	XLVII. Cemeteries and Burial Grounds, ...	2113-2122
	(a) Changing location of cemeteries. Removal of bodies, ...	2113-2116
	(b) Care of neglected cemeteries by township supervisors, ...	2117-2119
	(c) Care of neglected cemeteries by overseers of poor, ...	2120-2122
Chapter	XLVIII. Actions by and against Townships, ...	2123-2130
	(a) Affidavits of defense, ...	2123
	(b) Filing of judgments obtained before justices and aldermen, ...	2124-2127
	(c) Actions on surety company bonds, ...	2128-2130
Chapter	XLIX. Penal Provisions. Commitments. Prison, ...	2131-2146
	(a) Illegal use of public money, ...	2131-2132
	(b) Embezzlement, ...	2133-2135
	(c) Public contracts, ...	2136-2137
	(d) Offenses against the currency, ...	2138
	(e) Public accounts, ...	2139-2140
	(f) False statements, ...	2141-2143
	(g) Use of township lockups, ...	2144-2145
	(h) Maintenance of prisoners, ...	2146
Chapter	L. Bureau of Municipalities, ...	2147-2149

THE GENERAL TOWNSHIP ACT

Approved July 14, 1917, P. L. 840

AN ACT

Concerning townships; and revising, amending, and consolidating the law relating thereto.

CHAPTER I

PRELIMINARY PROVISIONS.

ARTICLE I.

Section 1. Be it enacted, &c., That this act shall be known, and may be cited, as "The General Township Act." This act shall take effect on the first day of July, one thousand nine hundred and seventeen.

Section 2. This act does not include any provisions, and shall not be construed to repeal any acts, relating to—

- (a) The procedure for the collection of municipal claims by liens.
- (b) The amount and method of incurring or increasing bonded indebtedness.
- (c) Election officers and conduct of elections.
- (d) Poor districts.
- (e) Boards of health.
- (f) Common schools.
- (g) Constables.
- (h) Justices of the peace.
- (i) The giving of municipal consent to public service corporations.
- (j) State roads, State-aid roads, and private roads.
- (k) Validations of elections, bonds, ordinances, and acts of corporate officers.

Section 3. The provisions of this act so far as they are the same as those of existing laws are intended as a continuation of such laws and not as new enactments. The repeal by this act of any Act of Assembly or part thereof shall not revive any act or part thereof heretofore repealed or superseded, nor affect the existence or class of any township heretofore created. The provisions of this act shall not affect any act done, liability incurred or right accrued or vested, or affect any suit or prosecution, pending or to be instituted, to enforce any right or penalty or punish any offense under the authority

of such repealed laws. All ordinances, regulation, and rules, made pursuant to any act of Assembly repealed by this act, shall continue with the same force and effect as if such act had not been repealed. Any person holding office under any act of Assembly repealed by this act shall continue to hold such office until the expiration of the term thereof, subject to the conditions attached to such office prior to the passage of this act.

Section 4. The provisions of this act shall be severable, and if any of the provisions shall be held to be unconstitutional such decision shall not affect the validity of any of the remaining provisions of this act.

Section 5. Whenever, in this act, reference is made to any act by title, such reference shall also apply to and include any codification wherein the provisions of the act referred to are substantially re-enacted.

Section 6. This act, in so far as it relates to townships of the first class, shall apply to all such townships within the Commonwealth; and in so far as it relates to townships of the second class, shall apply to all such townships within the Commonwealth.

Section 7. Whenever any township of the second class is designated a township of the first class, or whenever any township of the first class is re-established as a township of the first class, or whenever any township is divided, all liabilities, incurred rights, accrued or vested, obligations issued or contracted, and all suits and prosecutions pending or to be instituted to enforce any right or penalty accrued, or punish any offense committed, prior to such change of class or division, and all ordinances, shall continue with the same force and effect as if no such change or division had been made.

Section 8. Except so far as modified by the provisions of this act, all existing laws in force prior to the twenty-eighth day of April, one thousand eight hundred ninety-nine, relating to townships, shall continue in force as to either class of townships, in the same manner as prior to the passage of this act. All laws adopted subsequent to said date, not modified by this act, shall remain in force in the same manner as prior to the passage of this act.

Drafted from Sec. 3, Act of April 28, 1899, P. L. 104. The last paragraph and the clause "in force prior to the twenty-eighth day of April, one thousand eight hundred ninety-nine," are new.

Section 9. This act does not provide a complete system for the assessment and collection of township taxes. All acts and parts of acts relating to taxation in townships, in force prior to the passage of this act, which are not re-enacted or specifically repealed by this act, shall remain in force as to either class of townships in the same manner as prior to the passage of this act.

CHAPTER II

CLASSIFICATION OF TOWNSHIPS.

ARTICLE I.

Section 15. The townships now in existence and those to be hereafter created are divided into two classes. Those townships having a population of at least three hundred inhabitants to the square mile shall be townships of the first class. All other townships shall be townships of the second class.

Drafted from part of Sec. 1, Act of May 29, 1907, P. L. 305, amending Sec. 1, Act of April 28, 1899, P. L. 104 as amended by Act of May 11, 1901, P. L. 160 and April 1, 1905, P. L. 97. The first three lines of the original act, which gave notice of the purpose and intent of the classification of townships, have been omitted.

Section 16. Townships of the first class shall include all townships heretofore designated as townships of the first class by the county commissioners of the several counties, under the provisions of an act, entitled "An act to provide for the classification of the townships of the Commonwealth, with respect to their population, into two classes, and to prescribe the form of government for townships of each class," approved the twenty-eighth day of April, one thousand eight hundred and ninety-nine, and the several amendments thereto, and which are now governed as such; and also all townships having the requisite population, as provided by section fifteen of this act, which shall hereafter be designated as townships of the first class under the provisions of this act. All other townships now in existence, or hereafter erected or created under the provisions of this act, shall be townships of the second class.

This section is new and was inserted to assure the application of the act to all townships of the Commonwealth.

CHAPTER III

CREATION OF TOWNSHIPS.

For other provisions relating to this subject see appendix, Chapter XXIV, Sec. 1503.

ARTICLE I.

ERECTION OF TOWNSHIPS OF THE SECOND CLASS.

Section 20. The courts of quarter sessions may, upon the presentation of a petition, erect new townships of the second class out of parts of two or more townships, so as to suit the convenience of the inhabitants thereof.

Drafted from Sec. 13, Act of April 15, 1834, P. L. 537, but limited in drafting to the erection of second class townships only.

Section 21. Upon application by petition to the court for the purpose of erecting a new township of the second class, the court shall appoint three impartial men to inquire into the propriety of granting the prayer of the petition. The commissioners so appointed, or any two of them, shall make a plot or draft of the township proposed to be erected, if the same cannot be fully designated by natural lines or boundaries: all which they, or any two of them, shall report to the next court of quarter sessions, together with their opinion of the same. At the term following the one at which the report was made, the court shall make such order thereupon as shall be just and reasonable.

Drafted from Sec. 14, Act of April 15, 1834, P. L. 537. The words "of the second class" are new.

Section 22. Whenever commissioners appointed under the twenty-first section of this act shall report unfavorably to the erection of a new township, the court shall direct a second commission or review for the same purposes, on the petition of a majority of the voters of the townships affected by said proceedings. Such petition shall be presented to the court at or before the second term thereof after the final confirmation of the report of the first commission.

Drafted from Sec. 1, Act of April 26, 1864, P. L. 489 supplementing Sec. 14, Act of 1834 from which sections 20 and 21 were taken. The draft was restricted to cases where unfavorable report is made.

Section 23. When a return has been made by commissioners appointed under the twenty-first section of this act favorable to the erection of a new township, the court shall order a vote of the quali-

fied electors of the township from which the largest number of taxables to be embraced in the proposed new township is to be taken, and also of the qualified electors outside of such township residing within the bounds of the proposed new township, to be taken on the question of the erection of a new township.

Drafted from Sec. 1, Act of April 24, 1857, P. L. 304.

Section 24. The court shall fix a day upon which the election of officers of the township, from which the largest number of taxables to be embraced in the proposed new township is to be taken, shall hold an election at the place fixed by law for holding township elections in said township, which election shall be governed by the laws of this Commonwealth relating to township elections. The ballots for said election shall be in the form prescribed by the general election laws. At such election all qualified electors residing within the districts mentioned in section twenty-three of this act may vote.

Drafted from part of Sec. 2, Act of April 24, 1857, P. L. 304. The clause providing for the form of the ballot is new. Sec. 3, Act of April 24, 1857, prescribed a form of ballot but under the decision in *McLaughlin vs. Summit Hill Borough*, 224 Pa. 425, such ballots should be prepared under the Act of April 29, 1903, P. L. 338.

Section 25. The constable of the township in which the election is to be held, or, if there be no constable, then one of the supervisors or commissioners designated by the court, shall give at least fifteen days' notice of the time and place of holding said election, by posting not less than six written or printed handbills in public places in each of the townships which are to be divided by the formation of the new township.

Drafted from part of Sec. 2, Act of April 24, 1857, P. L. 304. The clause requiring the court in certain cases to designate who is to post notices, is new.

Section 26. The election officers, after the polls have been closed, shall count the ballots and certify, before noon of the second day following such election, the number of votes for and against a new township, to the clerk of the court of quarter sessions of the county. The clerk shall, after filing the said returns in his office, lay the same before the court at the next session. If it shall appear that a majority of the votes so taken are for a new township, the court shall thereupon order and decree a new township agreeably to the lines marked out and returned by the commissioners. If a majority of the votes have been given against a new township, no further action shall be had upon said proceedings.

Drafted from Sec. 4, Act of April 24, 1857, P. L. 304, although the provision that the certification must be made before noon of the second day following the election was in that section "within five days thereafter."

Section 27. When any township of the second class is erected under the provision of this article the court of quarter sessions may authorize the citizens of the new township to hold an election for all township officers, upon such notice and for such terms, not inconsistent with this act, as the court may direct.

Drafted from Sec. 32, Act of April 5, 1849, P. L. 555.

Section 28. Whenever a new township is erected by uniting parts of two or more adjoining townships, the court of common pleas of the county, sitting in equity may, upon the application of the proper authorities of such township or townships, by a suit or suits in equity, adjust all matters of indebtedness between the said old townships and the said new township. In the execution of any decree in any such suit or suits, the proper officers of the township liable to pay may levy separate rates of taxation, if necessary, on the said parts of townships so erected into one.

Drafted from part of Sec. 1, Act of April 12, 1866, P. L. 109.

CHAPTER III

CREATION OF TOWNSHIPS.

ARTICLE II.

Designation of Townships of the First Class.

Section 30. At any time, not less than one year before the time fixed for taking a decennial census of the United States, whenever the owners of twenty-five per centum of the assessed valuation of the real estate of any township of the second class shall present their petition to the court of quarter sessions, averring that the population of the township is at least three hundred to the square mile, and shall give such security as the court may prescribe for the payment of all costs and expenses which may be incurred in any procedure had upon said petition, the court shall appoint a commissioner to make an enrollment of the inhabitants of the township. The said commissioner shall make an enrollment of the inhabitants of such township, and make report thereof to the court at the next ensuing term. Upon the filing of the report the same shall be confirmed nisi, which confirmation shall become absolute unless excepted to within twenty days thereafter, during which time notice of the said filing and confirmation shall be advertised in a newspaper published in the county once a week for three weeks. If exceptions are filed to the report within the said twenty days, the court, upon consideration thereof, shall confirm the report or modify the said finding. After final confirmation the clerk of the court shall certify to the county commissioners the population of the township, as shown by said proceedings. The costs and expenses of the proceedings, including a reasonable fee for the commissioner, shall be paid by the petitioners or by the township, or partly by each, as the court shall direct.

Drafted from the second part of Sec. 1, Act of March 24, 1909, P. L. 56, amending Sec. 2, Act of April 28, 1899, P. L. 104.

The only proper relator to bring action of mandamus against the county commissioners to compel them to declare a township of the first class is the district attorney, or attorney general, and an assistant cannot act for the district attorney. Proper form of prayer would be for mandamus to perform the duty of ascertainment of population as preliminary to proclamation: *Commonwealth v. County Commissioners*, 35 Luz. 319.

Section 31. In addition to the procedure provided by section thirty of this act, the county commissioners of each county shall, following each decennial census of the United States, ascertain from

such census whether any township in the county has a population of three hundred inhabitants to the square mile. Before the first day of January following the ascertainment of the population by the decennial census of the United States, the county commissioners shall, by proclamation, designate the townships of the first class, if any have the required population. By proclamation, to be issued prior to the first day of January of each of the intervening years, the county commissioners of each county shall designate the townships, if any, which have been ascertained to come within the said conditions under the procedure provided in section thirty of this act, and to be townships of the first class. All proclamations by the county commissioners shall be advertised in two newspapers published in the county. The cost of the advertisement of any such proclamation shall be paid by the township.

Drafted from the first part of Sec. 1, Act of March 24, 1909, P. L. 56, amending Sec. 1, Act of April 28, 1899, P. L. 104.

Section 32. In all townships designated as townships of the first class the officers provided for by this act for townships of the first class shall be chosen at the municipal election then next ensuing, as provided in chapter five, article one of this act in such cases, and the township government constituted by this act for townships of the first class shall go into force on the first Monday of January next ensuing said election. At such time all officers provided for townships of the second class shall cease to exist in such township, and the terms of the officers then in office shall expire.

Drafted from parts of Secs. 2 and 4, Act of April 28, 1899, P. L. 104.

Section 33. The court of quarter sessions upon petition, may divide any township of the first class, heretofore or hereafter created, into wards, erect any wards out of two or more adjoining wards or parts thereof, divide any wards already erected into two or more wards, or alter the lines or boundaries of any two or more adjoining wards, and may cause lines or boundaries of wards to be fixed and established.

The petition provided for in this act shall be signed by at least twenty free-holders, residents of the township of the first class or of the ward or wards the limits of which it is proposed to change. Upon the presentation of the petition, the court shall appoint three impartial men as commissioners to inquire into the propriety of granting the prayer of the petitioners. The commissioners, or any two of them shall make a report to the next term of the court, and shall accompany it with a plot showing the boundaries of the township of the first class and the wards before and after the proposed change, whenever the same cannot be fully designated by natural lines.

When the same is presented, the court shall confirm the report nisi, which confirmation shall become absolute unless exceptions thereto are filed within thirty days after such confirmation nisi. The court may grant a review if in its opinion a better adjudication may thereby be secured. If no exceptions are filed, the court may confirm the report, or make such other order as to it shall be deemed proper. If exceptions are filed, the court shall fix a time for hearing, and thereafter shall enter such decree as to it shall be deemed just and proper.

The commissioners appointed under the provisions of this act shall receive three dollars per diem, except the surveyor, who shall receive five dollars per diem. Each commissioner shall also be entitled to mileage at the prevailing rate. The compensation of the commissioners and mileage shall be paid by the township in all cases where the prayer of the petitioners is granted, and in other cases shall be paid by the petitioners.

(Amendment of April 20, 1921, P. L. 186, Sec. 1). This section is new.

Section 34. In all townships of the first class now in existence which are divided into election districts, the election districts as now established shall constitute the wards of the township of the first class without any proceedings for the creation of such wards, and the wards so established may be changed, divided, or altered, and the lines and boundaries thereof fixed and established, from time to time, as provided in this act.

Each ward of each township of the first class as established by this act, and each ward which shall hereafter be created in any township of the first class under the provisions of this act, shall constitute an election district. The court of quarter sessions may, from time to time, divide any such ward into two or more election districts so as to suit the conveniences of the electors thereof.

The wards of townships of the first class which are created by this act shall be numbered in the same manner as the election districts are now numbered. In case any township of the first class is hereafter divided into wards, or in any case where any ward in any township of the first class shall be created, divided, or altered, the court shall in its decree fix the number of the wards of such township of the first class.

(Amendment of April 20, 1921, P. L. 186, Sec. 1). This section is new.

Section 2, Act of June 28, 1917, P. L. 647, provides as follows: "After the passage of this act, upon application, the court of common pleas of the proper county shall number all election districts not numbered in townships of the first class, and cause the same to be certified to the County Commissioners."

CHAPTER III

CREATION OF TOWNSHIPS.

ARTICLE III.

Re-Establishment of Townships of the Second Class.

Section 35. At any time, not less than two years before the time fixed for taking a decimal census of the United States, whenever twenty or more freeholders residing in any township of the first class shall present their petition to the court of quarter sessions, averring that the township no longer has a population of three hundred to the square mile, and shall give such security as the court may prescribe for the payment of all costs and expenses which may be incurred in any proceedings had upon said petition, the court shall appoint a commissioner to make an enrollment of the inhabitants of the township. The commissioner shall make an enrollment of the inhabitants of such township, and make report thereof to the court at the next ensuing term. Upon the filing of the report the same shall be confirmed nisi. This confirmation shall become absolute unless excepted to within twenty days thereafter, during which time notice of the said filing and confirmation shall be advertised, once a week for three weeks, in a newspaper published within the county, in general circulation in the district to be affected. If exceptions are filed to the report within said twenty days, the court upon consideration thereof, shall confirm the report or modify the finding. After final confirmation the clerk of the court shall certify to the county commissioners and to the township commissioners the finding, as shown by the proceedings. The costs and expenses of the proceedings, including a reasonable fee for the commissioner, shall be paid by the petitioners or by the township, or partly by each, as the court shall direct.

Drafted from Sec. 1, Act of March 14, 1905, P. L. 36.

Section 36. The county commissioners in every county of the Commonwealth shall, by proclamation issued prior to the first day of January of each year, designate the townships, if any, which, since the last preceding proclamation, have been ascertained to have less than three hundred inhabitants to the square mile and to be townships of the second class. In all townships so designated the officers provided by this act for townships of the second class shall be chosen at the municipal election then next ensuing; and the township government constituted by this act for townships of the second class shall go into force on the first Monday of December next ensuing such election.

Drafted from Sec. 2, Act of March 14, 1905, P. L. 36.

CHAPTER III

CREATION OF TOWNSHIPS.

ARTICLE IV.

DIVISION OF TOWNSHIPS.

(a) By Petition, Appointment of Commissioners, and Election.

Section 40. The courts of quarter sessions may, upon the presentation of a petition and the bond required by section fifty-five of this act, divide any township of the first or second class so as to suit the convenience of the inhabitants thereof.

Drafted from Sec. 13, Act of April 15, 1834, P. L. 537.

Section 41. Upon application by petition to the court, for the purpose of dividing any township of the first or second class, the said court shall appoint three impartial men to inquire into the propriety of granting the prayer of the petition. The commissioners so appointed, or any two of them, shall make a plot or draft of the township proposed to be divided, and the division line proposed to be made therein, if the same cannot be fully designated by natural lines or boundaries; all which they, or any two of them, shall report to the next court of quarter sessions, together with their opinion of the same. At the term following the one at which the report was made the court shall make such order thereupon as shall be just and reasonable.

Drafted from Sec. 14, Act of April 15, 1834, P. L. 537.

Section 42. Whenever commissioners appointed under the forty-first section of this act shall report unfavorably to the division of any township, the court shall direct a second commission or review for the same purposes, on the petition of a majority of the voters of the township affected by said proceedings. Such petition shall be presented to the court at or before the second term thereof after the final confirmation of the report of the first commission.

Drafted from Sec. 1, Act of April 26, 1854, P. L. 489.

Section 43. Whenever a return has been made by commissioners appointed under the provisions of section forty-one of this act favorable to a division, the court shall order a vote of the qualified electors of said township to be taken on the question of a division thereof.

Drafted from Sec. 1, Act of March 14, 1857, P. L. 93.

Section 44. The court shall fix a day upon which the election officers of the township proposed to be divided shall hold an election, at the place fixed by law for holding township elections, which election shall be governed by the laws of this Commonwealth relating to township elections. The ballots for said election shall be in the form prescribed by the general election laws.

Drafted from part of Sec. 2, Act of April 24, 1857, P. L. 304. The clause providing for the form of the ballot is new. Sec. 3, Act of April 24, 1857, prescribed a form of ballot but under the decision in *McLaughlin v. Summit Hill Borough*, 224 Pa. 425 such ballots should be prepared under the Act of April 29, 1903, P. L. 338.

Section 45. The constable of the township, or, if there be no constable, then one of the supervisors or commissioners designated by the court, shall give at least fifteen days' notice of the time and place of holding said election, by posting not less than six written or printed handbills in public places in said township.

Drafted from part of Sec. 2, Act of March 14, 1857, P. L. 93.

Section 46. The election officers, after the polls have been closed, shall count the ballots and certify, before noon of the second day following such election, the number of votes for or against a division, to the clerk of the court of quarter sessions of the county. The clerk shall, after filing the said returns in his office, lay the same before the court at the next sessions. If it shall appear that a majority of the votes so taken are for a division, the court shall thereupon order and decree a division of the township agreeably to the lines marked out and returned by the commissioners. If a majority of votes have been against a division, no further action shall be had upon such proceedings.

Drafted from Sec. 4, Act of March 14, 1857, P. L. 93.

(b) By Petition of Property Owners, and Election.

Section 50. Whenever the owners of twenty-five per centum of the assessed valuation of the real estate of any township of the first or second class shall make application by petition to the court of quarter sessions, setting forth that the convenience of the inhabitants of such townships will be promoted by a division thereof, and shall in said petition accurately describe the proposed division line by courses and distances or natural marks, and accompany the same with a plot or draft showing the existing lines of the township proposed to be divided and the proposed division line, the court shall order a vote of the qualified electors of the township to be taken on the question of such division. The court shall fix a day upon which the election officers of the township proposed to be divided shall hold an election,

at the place fixed by law for the holding of township elections, which election shall be governed by the laws relating to township elections.

Drafted from part of Sec. 1, Act of April 22, 1905, P. L. 288.

Section 51. The constable of the township, or, if there be no constable, then one of the supervisors or commissioners designated by the court, shall give at least fifteen days' notice of the time and place of the holding of said election, by posting not less than ten handbills, written or printed, in public places in said township.

Drafted from part of Sec. 1, Act of April 22, 1905, P. L. 288.

Section 52. The ballots to be deposited by the electors shall be prepared in the form prescribed by the general election law. The officers, after the polls have been closed, shall count the ballots and certify, within two days thereafter, the number of votes for and against division, to the clerk of the court of quarter sessions, and shall file in the office of said clerk the ballots cast at said election. The clerk shall lay said returns and ballots before the court at the next session thereof. If it shall appear that the majority of the votes so taken are "for division," the court shall thereupon order and decree a division of the township agreeably to the lines set forth in the petition. If a majority of votes are "against division," no further action shall be had upon such proceedings. If there is any difficulty in locating the division line described in the petition upon the ground, the court may appoint commissioners for that purpose.

Drafted from Sec. 2, Act of April 22, 1905, P. L. 288.

(c) Pay of Commissioners, Surveyors, Artists, and Chain-Carriers.

Section 55. The pay of commissioners appointed to divide townships and to establish township division lines shall be three dollars (\$3.00), the pay of surveyors or artists shall be five dollars (\$5.00), and the pay of chain-carriers shall be one dollar and fifty-cents (\$1.50), for each day necessarily employed, and five cents per mile for each mile necessarily traveled, in the discharge of their duties. The same shall be paid by the county at the time of the session or term of court to which their report is rendered and filed. The petitioners asking for their appointment shall pay the same amount into the county treasury in all such cases as the court, by order, may direct. The court shall require the petitioners to file a bond with their petition in a sufficient sum to secure the payment of the same.

Drafted from Sec. 1, Act of April 4, 1907, P. L. 44, and Sec. 1, Act of May 8, 1876, P. L. 136.

(d) Adjustment of Indebtedness.

Section 60. Whenever a township of the first or second class has been divided, the court of common pleas of the county sitting in equity may, upon the application of the proper authorities of said townships, or either of them, by a suit or suits in equity, adjust all matters of indebtedness between the said new townships. In the execution of any decree in any such suit or suits the proper officers of the township liable to pay may levy separate rates of taxation, if necessary, on the said parts of townships so divided.

Drafted from Sec. 1, Act of April 12, 1866, P. L. 109.

(e) Organization of Townships Formed by the Division of a Township.

Section 65. All townships formed, under the provisions of this article, by the division of any township of the first or second class, shall be townships of the second class. The part of the township of the first class or of the township of the second class, as the case may be, remaining after such division, shall remain a township of the first class or second class, as the case may be, until determined otherwise. In all townships so formed the officers provided by this act for townships of the second class shall be chosen at the next municipal election occurring at least three months after such formation, and the government constituted by this act for townships of the second class shall go into force on the first Monday of December next following such election.

This section is new and was inserted to fill a gap which seemed to be in the existing law.

CHAPTER III

CREATION OF TOWNSHIPS.

ARTICLE V.

CONSOLIDATION OF TOWNSHIPS.

Section 66. Whenever two or more townships of the same class, situate in the same county, shall be adjacent to each other, they may be consolidated into one township. Such consolidation shall be made under the following conditions: The township supervisors or the township commissioners of the respective townships may of their own initiative, or shall within sixty days after each is requested in writing by at least twenty-five qualified electors of the respective townships, enter into a joint agreement for the consolidation of such townships into one township. The joint agreement shall set forth the name of the new township and the territorial boundaries thereof. It may also set forth such terms as had been agreed upon for the disposition of the assets of each of the townships and for the liquidation of the indebtedness of the townships, either jointly, separately, or in certain defined proportions, and the adjusting and paying of the same by separate rates of taxation on all property subject to taxation within the boundaries of such townships respectively.

(Amendment of May 16, 1921, P. L. 573, Sec. 1.)

This entire article was first inserted by this amendment.

Section 67. The question of the consolidation of such townships shall be submitted to the vote of the qualified electors of each of the townships at a special election to be held on a day to be designated in the joint agreement. Any such election may be held on the day of any general or municipal election. The election shall be held by the regular election officers and in accordance with the provisions of the law regulating elections. Notice of each election shall be given by proclamation in the manner prescribed for proclamations for elections of township officers. The question to be submitted to the electors shall be submitted in the form and in the manner provided by the general election laws for the submission of similar questions.

If the majority of the votes cast at such election in each of the townships is in favor of the ratification of the agreement, that fact shall be certified to the supervisors or the commissioners of the respective townships, by the return boards, and the secretary of the res-

pective townships shall cause the same to be entered upon the minutes and upon the agreement.

(Amendment of May 16, 1921, P. L. 573, Sec. 1.)

Section 68. The agreement, or a certified copy thereof, shall be filed in the office of the clerk of the court of quarter sessions of the proper county. Upon the filing thereof, the several townships shall be consolidated into one township under the manner set forth in the agreement. All costs and expenses incurred in such consolidation, except such as may be incurred at any general or municipal election, shall be paid by the consolidated township; and, in case the electors shall decide against any such consolidation, such costs and expenses shall be paid in equal shares by the townships proposed to be consolidated.

(Amendment of May 16, 1921, P. L. 573, Sec. 1.)

Section 69. After such consolidation the rights, privileges and franchises of each of the townships, and all the property, real, personal, and mixed, and all debts due on whatever account, and other things in action belonging to each of such townships, shall be vested in the new township. The title to real estate vested in either of such townships shall not revert or be in any way impaired by reason of such consolidation. All rights of creditors and liens shall be preserved, and all debts and liabilities of either of such townships shall attach to such new township and be in force against it. In the case of any such consolidation, the supervisors or the township commissioners of the township having the largest population shall constitute the supervisors or commissioners of the new township, and such officers shall remain in office until the expiration of the respective terms for which they were elected. As vacancies occur in any of said offices by the expiration of their terms, such vacancies shall be filled by the election by the electors of the consolidated township of supervisors or commissioners in the same manner as is now provided for the election of these officers in accordance with the provisions of this act.

(Amendment of May 16, 1921, P. L. 573, Sec. 1.)

CHAPTER IV

TOWNSHIP LINES AND BOUNDARIES.

ARTICLE I.

(a) Altering and Ascertaining Township Lines and Boundaries.

Section 70. The courts of quarter sessions may, upon the presentation of a petition, alter the lines of any two or more adjoining townships of the first or second class so as to suit the convenience of the inhabitants thereof, and cause the lines or boundaries of townships to be ascertained and established.

Drafted from Sec. 13, Act of April 15, 1834, P. L. 537.

Section 71. Upon application by petition to the court, for the purpose of altering the lines of any township or of ascertaining and establishing the lines or boundaries of any township, the court shall appoint three impartial men to inquire into the propriety of granting the prayer of the petition. The commissioners so appointed, or any two of them, shall make a plot or draft of the lines of such adjoining townships proposed to be altered or of the lines proposed to be ascertained and established, if the same cannot be fully designated by natural lines or boundaries: all which they, or any two of them, shall report to the next court of quarter sessions, together with their opinion of the same. At the term following the one at which the report was made the court shall make such order thereupon as shall be just and reasonable.

Drafted from Section 14, Act of April 15, 1834, P. L. 537.

Section 72. In all cases where commissioners are appointed under the seventy-first section of this act the court shall direct a second commission or review, for the same purposes, on the petition of a majority of the voters of the township or townships affected by said proceedings. Such petition shall be presented to the court at or before the second term thereof after the final confirmation of the report of the first commission.

Drafted from Section 1, Act of April 26, 1854, P. L. 489.

Section 73. Whenever the boundaries of any township or townships have been altered, the court of common pleas sitting in equity may, upon application of the supervisors, commissioners, poor authorities, or school directors, of any such township, poor district, or school district, by a suit or suits in equity, adjust the taxes,

debts, and expenses for road, school, and poor purposes between the several townships affected. In the execution of any decree, the officers of the township, poor district, or school district liable to pay may levy separate rates of taxation, if necessary, in the said parts of such townships so affected.

Drafted from Secs. 1 and 2, Act of May 1, 1861, P. L. 539.

(b) Ascertaining and Establishing Disputed Lines and Boundaries between Townships and Townships and Municipalities.

Section 80. The courts of quarter sessions may, upon the presentation of a petition, ascertain and establish disputed lines and boundaries between two or more townships, between townships and cities, or between townships and boroughs.

Drafted from Sec. 1, Act of June 3, 1893, P. L. 284.

Section 81. Upon application by petition to the court, for the purpose of ascertaining and establishing any such disputed lines or boundaries, the court shall appoint three impartial men, one of whom shall be a surveyor. After having given notice to parties interested, as directed by the court, the commissioners shall view the said lines or boundaries. The commissioners, or any two of them, shall make a plot or draft of the lines and boundaries proposed to be ascertained and established, if the same cannot be fully designated by natural lines or boundaries; all of which they, or any two of them, shall report to the next court of quarter sessions, together with their opinion of the same. At the term following the one at which the report was made the court shall make such order thereupon as shall be just and reasonable.

Drafted from part of Sec. 2, Act of June 3, 1893, P. L. 284.

Section 82. Any person interested may petition the court for a review, or may except to the report of the commissioners. When matters of fact are in dispute the court may frame an issue, and certify the same for trial to the court of common pleas.

Drafted from part of Sec. 2, Act of June 3, 1893, P. L. 284.

Section 83. Whenever any such line or boundary is established the court shall cause the same to be marked with stone monuments, placed at intervals not exceeding fifteen hundred feet; and the expense of establishing said line or boundary and the placing of said monuments, when approved by the court, shall be borne equally by the municipalities and townships interested.

Drafted from Sec. 4, Act of June 3, 1893, P. L. 284.

(c) Pay of Commissioners, Surveyors, Artists, and Chain-Carriers.

Section 90. The pay of commissioners appointed to run township lines shall be three dollars (\$3.00), the pay of surveyors or artists shall be five dollars (\$5.00), and the pay of chain-carriers shall be one dollar and fifty cents (\$1.50), for each day necessarily employed, and five cents per mile for each mile necessarily traveled, in the discharge of their duties. The same shall be paid by the county at the time of the session or term of court to which their report is rendered and filed. The petitioners asking for their appointment shall pay the same amount into the county treasury, in all such cases as the court by order may direct. The court shall require the petitioners to file a bond with their petition, in a sufficient sum to secure the payment of the same.

Drafted from Sec. 1, Act of April 4, 1907, P. L. 44, Sec. 1, Act of May 8, 1876, P. L. 136, and Sec. 3, Act of June 3, 1893, P. L. 284.

(d) Centre Line of Navigable Stream as Boundary.

Section 95. Whenever any township of the first or second class is bounded by the nearest margin of any navigable stream, and the opposite township, borough, or city, as the case may be, is also bounded by the nearest margin of the same stream, the middle of such stream shall be the boundary between such townships, township and borough, or township and city.

Drafted from Sec. 1, Act of May 24, 1887, P. L. 203.

CHAPTER V

ELECTION OF OFFICERS; VACANCIES IN OFFICE.

ARTICLE I.

IN TOWNSHIPS OF THE FIRST CLASS.

(a) General Provisions.

Section 100. No person shall be eligible to any office in any township of the first class unless he is an elector of the township for which he is chosen.

Drafted from Sec. 84, Act of April 15, 1834, P. L. 537.

Section 101. Officers of townships of the first class shall hold their offices until their successors are elected and qualified.

Drafted from part of Sec. 4, Act of April 28, 1899, P. L. 104.

Section 102. The electors of each township of the first class shall elect (a) at least five township commissioners, or, where there are more than five election districts in any township, then as many as there are election districts, (b) one township treasurer, (c) one township assessor and two assistant assessors, and (d) three township auditors.

This section is new.

(b) Commissioners.

Section 110. At the municipal election in the year one thousand nine hundred and twenty-one, and every four years thereafter, there shall be elected, by the qualified voters of each even-numbered ward of townships of the first class, one township commissioner, who need not reside in the ward for which he is elected; in townships of the first class, having five or less wards, the number of commissioners of such township shall be five. The remaining number of commissioners to which the said township is entitled, as aforesaid, including the commissioners now holding office for the odd-numbered wards of the said township shall hold over and continue in said office until the first Monday in January, in the year one thousand nine hundred and twenty-four. At the township election to be held on the first Tuesday following the first Monday in November, in the year one thousand nine hundred and twenty-three, and every four years thereafter, the qualified voters of each odd-numbered ward of every township of the first class shall elect one commissioner, who need not reside in the ward for which he is elected; and the remaining number

of commissioners to which the said township is entitled, as aforesaid, shall at the same time be elected by the qualified voters of the whole township. All commissioners hereafter elected shall hold office for the term of four years.

When any township of the first class is organized, there shall be elected, at the municipal election following, one township commissioner from each ward, who need not reside in the ward for which he is elected. In any such townships having less than five wards, the number of township commissioners shall be five, and the number of commissioners equal to the difference between five and the number of wards, shall be elected at large. At such election the township commissioners, elected in even-numbered wards shall be elected for a term of two years, and the township commissioners elected at large and in odd-numbered wards, shall be elected for a term of four years, or vice versa, as the case may be, in order that the terms may harmonize with the elections in townships organized prior to the passage of this act.

(Amendment of April 20, 1921, P. L. 186, Sec. 2). See notes to section immediately following. The purpose of this amendment was to provide for the election of township commissioners by wards instead of election districts. In this manner where additional election districts are created, the number of commissioners will not be increased.

Section 110. When any township of the first class is organized, there shall be elected, at the municipal election following, one township commissioner from each election district, who need not reside in the election district for which he is elected. In any such townships having less than five election districts, the number of township commissioners shall be five, and the number of commissioners equal to the difference between five, and the number of election districts, shall be elected at large. At such election the township commissioners elected in even-numbered districts, shall be elected for a term of two years, and the township commissioners elected at large and in odd-numbered districts shall be elected for a term of four years, or vice versa as the case may be, and in townships not divided into election districts, two of said commissioners shall be elected for a two year term, and three for a four year term, in order that the terms may harmonize with the elections in townships organized prior to the passage of this act.

(Amendment of April 26, 1921, P. L. 286, Sec. 1). Section 110 was amended twice by the legislature of 1921. This section as originally passed was drafted from Sec. 1, Act of June 1, 1915, P. L. 684, amending Sec. 4, Act of April 28, 1899, P. L. 104. The act of June 1, 1915, contained the clause "no township commissioner shall be eligible to hold any other township office," and this clause was contained in this same section as originally introduced in the Legislature, but was dropped during its progress through the same when the section was amended in committees of the Senate.

The purpose of the above amendment was to provide for the election of commissioners in townships not divided into election districts.

Section 111. The notice of any primary election, or nominating caucus, convention, or meeting, held for the purpose of nominating candidates for the office of township commissioner, and the notice of any election of township commissioners, shall designate for what election district of the township each commissioner is to be nominated or elected, as the case may be. In case any one or more of the township commissioners is to be elected by vote of the qualified electors of the township at large, the notice shall so state. The ballots to be cast at any election for township commissioners shall designate, under an appropriate heading, the candidate for the office of township commissioner for whom the qualified electors of the election district are entitled to cast their ballots, and under an appropriate heading the candidate or candidates for the office of township commissioner which are to be elected by the electors of the township at large.

Drafted from Sec. 5, Act of April 27, 1909, P. L. 187.

(c) Treasurer.

Section 115. At the municipal election in the year preceding the expiration of the term of the treasurer now in office, or at the municipal election following the designation of a township of the first class, and at the municipal election every four years thereafter, the qualified electors of each township of the first class shall elect a township treasurer. The township treasurer elected under this section shall hold office for a term of four years from the first Monday of January next following his election.

The same person may hold the office of township treasurer and treasurer of the school board, but no township treasurer shall hold the office of township auditor.

Drafted from part of Sec. 4, Act of April 28, 1899, P. L. 104. The second paragraph was drafted from Sec. 1, Act of May 13, 1915, P. L. 303, which is an amendment of the Act of April 28, 1899.

Section 120. At the municipal election following the designation of a township of the first class, and at the municipal election every four years thereafter, the qualified electors of such township of the first class shall elect a township assessor and an assistant township assessor. The township assessor and assistant township assessor elected as herein provided shall hold office for a term of four years from the first Monday of January next following their election. In each township of the first class where the term of the township assessor now in office expires on the first Monday of January, one

thousand nine hundred and twenty, the qualified electors of such township shall, at the municipal election in the year one thousand nine hundred and nineteen, elect one township assessor and one assistant township assessor, who shall hold office for terms of four years each from the first Monday of January succeeding their election; and quadrennially thereafter, a township assessor and an assistant township assessor shall be elected for terms of four years each from the first Monday of January succeeding their election.

In each township of the first class where the term of the township assessor now in office expires on the first Monday of January, one thousand nine hundred and twenty-two, the qualified electors of such township shall, at the municipal election in the year one thousand nine hundred and nineteen, elect one assistant township assessor, who shall hold office for a term of four years from the first Monday of January succeeding his election; and biennially thereafter, at each municipal election, the qualified electors shall elect one township assessor or one assistant township assessor, as the case may be, for a term of four years from the first Monday of January succeeding his election.

It is the intention of this act that in each township of the first class there shall be one township assessor and one assistant township assessor, in addition to the two assistant assessors now provided for, to assist in the valuation of real estate at the triennial assessment.

The compensation of the assistant township assessor shall be the same as now provided for by law for the township assessor, and shall be paid by the county.

(Amendment of June 18, 1919, P. L. 501). This section as it appeared before amendment was drafted from Sec. 4, Act of April 28, 1899, P. L. 104.

The amendment provides for the election of an assistant township assessor for a term of four years, to be elected quadrennially.

In addition to the township assessor and assistant township assessor elected under this section, and two assistant assessors elected under Section 121, each township of the first class is required to elect assistant assessors, for election purposes usually designated registry assessors. See the Act of June 16, 1891, P. L. 298 as amended by Act of April 20, 1917, P. L. 87.

Section 121. In all townships of the first class now organized the qualified electors shall, at the municipal election preceding the expiration of the term of the assistant assessors now in office, and at the municipal election every four years thereafter, elect two citizens, resident in said township, to be assistant assessors, to take the place of those whose terms expire on the first Monday of January next following such election.

In all townships hereafter designated as townships of the first class the qualified electors of such township shall, at the municipal

election next following such designation, elect two citizens, resident in said township, to be assistant assessors.

All assessors elected under the provisions of this section shall hold their office for a term of four years from the first Monday of January next following their election.

The election of assistant assessors provided for in this section shall extend only to the election of assistant assessors for the valuation of property for taxation, and shall not repeal or affect the provisions of any statute providing for the election of assistant assessors for the performance of duties relating to election. The assistant assessors elected under this section shall aid the township assessor only in making any triennial assessment of property made during their respective terms of office.

Drafted from part of Sec. 1, Act of April 23, 1903, P. L. 284. The last paragraph of the section was drafted from Section 2, Act of April 3, 1903, P. L. 284. See notes to the section immediately preceding. Assistant assessors for the performance of election duties are provided for by the Act of June 16, 1891, P. L. 298, as amended by Act of April 20, 1917, P. L. 87.

(e) Auditors.

Section 125. In every township of the first class there shall be three auditors, who shall hold their office for a term of four years from the first Monday of January next following their election. These auditors shall be elected as follows:

In townships now organized, at the municipal election preceding the expiration of the term of any of the auditors now in office; and at the municipal election every two years thereafter the qualified electors of each township of the first class shall elect one or two auditors, as the case may be, to take the place of those whose terms expire on the first Monday of January next following such election.

In all townships hereafter designated as townships of the first class, the qualified electors of such townships shall, at the municipal election next following such designation, elect three auditors. Two of the auditors so elected shall hold office for a term of four years, and one for a term of two years. The ballots at any such election shall designate the term for which each auditor is elected. At each municipal election following the electors of such township shall elect one or two auditors, as the case may be, to take the place of those whose terms expire on the first Monday of January next following such election.

No auditor shall at the same time hold the office of constable.

This section is new, but embodies the provisions relating to township auditors found in Sec. 4, Act of April 28, 1899, P. L. 104, and Sec. 1, Act of May 18, 1876, P. L. 179.

(f) Vacancies in Office.

Section 130. When a vacancy occurs in the office of township commissioner in any township of the first class, by reason of death, resignation, removal from the township, or otherwise, the court of quarter sessions, upon the petition of ten qualified voters of the district in which the vacancy occurs, may appoint a qualified voter of the township to fill such vacancy. If such petition is not presented to the court within thirty days after such vacancy occurs, the board of township commissioners of the township may appoint a qualified voter of the township to fill the vacancy. In either event the person so appointed shall hold office for the unexpired term of the person whose place he is appointed to fill.

Drafted from Sec. 4, Act of June 3, 1911, P. L. 628.

Section 131. The board of township commissioners of townships of the first class may fill any vacancy occurring in the office of township treasurer by death, resignation, removal from the township, or otherwise. The person so appointed shall hold office for the unexpired term of the person whose place he is appointed to fill.

Drafted from Sec. 3, Act of June 3, 1911, P. L. 628.

Section 132. When a vacancy occurs in the office of township auditor in any township of the first class, by reason of death, resignation, removal from the township, or otherwise, the court of quarter sessions shall appoint a suitable person to fill such vacancy for the unexpired term of the person whose place he is appointed to fill.

Drafted from Sec. 2, Act of March 11, 1842, P. L. 62, and Sec. 83, Act of April 15, 1834, P. L. 537.

Section 133. Vacancies in the office of assessor or assistant assessors in townships of the first class shall be filled in the manner now provided by law.

This section is new. For provisions of the existing law relating to this subject see the chapter on taxation in the appendix, subdivision (b) under the subject of assessors, sections 1544 to 1546 inclusive.

CHAPTER V

ELECTION OF OFFICERS; VACANCIES IN OFFICE.

ARTICLE II.

IN TOWNSHIPS OF THE SECOND CLASS.

(a) General Provisions.

Section 140. No person shall be eligible to any office in any township of the second class unless he is an elector of the township for which he is chosen.

Drafted from Sec. 84, Act of April 15, 1834, P. L. 537.

Section 141. The electors of each township of the second class shall elect (a) three township supervisors, (b) one township assessor, (c) three township auditors and (d) one tax collector.

This section is new.

(b) Supervisors.

Section 145. At the municipal election in the year one thousand nine hundred and seventeen, and at the municipal election every two years thereafter, the qualified electors of each township of the second class shall elect one township supervisor. All township supervisors elected under this section shall hold their office for a term of six years from the first Monday of December next following their election.

Drafted from Sec. 4, Act of July 22, 1913, P. L. 915.

Section 146. Whenever a township of the second class is created by the division of a township of the first or second class, under the provisions of chapter three, article four of this act; or whenever a township of the second class is created by re-establishment from a township of the first class, as provided in chapter three, article three of this act; or when a township of the second class is erected under the provisions of chapter three, article one of this act, and, in the latter case, the court so orders,—the qualified electors of such township shall, at the next ensuing municipal election, elect three township supervisors, one for a term of two years, one for a term of four years, and one for a term of six years. The ballot shall designate the term for which each township supervisor is elected. The township supervisors so elected shall hold office from the first Monday of December next following their election.

Biennially thereafter, at each succeeding municipal election, the electors of such township of the second class shall elect one township supervisor for a term of six years, to serve from the first Monday of December next following such election.

This section is new.

(c) Auditors.

Section 150. At the municipal election in the year one thousand nine hundred and seventeen, and at the municipal election every two years thereafter, the qualified electors of each township of the second class shall elect one township auditor. All township auditors elected under this section shall hold office for a term of six years from the first Monday of December next following their election.

No auditor shall at the same time hold the office of constable.

This section is new, except the last paragraph, which was drafted from Sec. 1, Act of May 18, 1876, P. L. 179.

Section 151. In all townships of the second class now organized, which have been electing township auditors for four-year terms, an auditor shall be elected at the municipal election in the year one thousand nine hundred and seventeen, for a term of six years, commencing on the first Monday of December next succeeding his election. At every biennial municipal election thereafter an auditor shall be elected, in each of such townships, for a term of six years from the first Monday of December next succeeding his election.

If at any time any of such townships shall be without the required number of auditors provided by this act for townships of the second class, vacancies shall exist, and the court of quarter sessions shall appoint an auditor or auditors to fill such vacancies, the auditors so appointed shall hold office until their successors are elected and qualified under the provisions of this section.

This section is new.

Section 152. Whenever a township of the second class is created by the division of a township of the first or second class, under the provisions of chapter three, article four of this act; or whenever a township of the second class is created by re-establishment from a township of the first class, as provided in chapter three, article three of this act; or when a township of the second class is erected, under the provisions of chapter three, article one of this act, and, in the latter case, the court so orders,—the qualified electors of such township shall, at the next ensuing municipal election, elect three township auditors, one for a term of two years, one for a term of four years, and one for a term of six years. The ballot shall designate the term for which each township auditor is elected. The township auditors so elected shall hold office from the first Monday of December next following their election.

Biennially thereafter, at each succeeding municipal election, the electors of such township of the second class shall elect one township auditor for a term of six years, to serve from the first Monday of December next following such election.

This section is new.

(d) Assessor.

Section 160. At the municipal election in the year one thousand nine hundred and seventeen, and at the municipal election every four years thereafter, the qualified electors of each township of the second class shall elect one township assessor. The township assessor elected under this section shall hold his office for a term of four years from the first Monday of January next following his election.

Drafted from Sec. 1, Act of Feb. 14, 1889, P. L. 7.

Section 161. Whenever a township of the second class is created by the division of a township of the first or second class, under the provisions of chapter three, article four of this act; or whenever a township of the second class is created by re-establishment from a township of the first class, as provided by chapter three, article three of this act; or whenever a township of the second class is erected, under the provisions of chapter three, article one of this act, and, in the latter case, the court so orders,—the qualified electors of any such township shall, at the next municipal election, elect one township assessor, for either of the following terms; to wit,—If such election occurs in the year in which an election for assessor is held under the provisions of section one hundred and seven of this act, then such assessor shall be elected for a term of four years. If such election occurs in the year in which an election for assessor is held under the provisions of section one hundred and seven of this act, then such assessor shall be elected for a term of four years. If such election occurs in a year when no assessor is elected under the provisions of said section one hundred and sixty, then such assessor shall be elected for a term of two years.

All assessors elected under this section shall hold their office for a term of two or four years, as the case may be, from the first Monday of January next following their election.

At the municipal election preceding the expiration of the term of any of the aforesaid assessors, and at the municipal election every four years thereafter, an assessor shall be elected for a term of four years, to hold office from the first Monday of January next succeeding such election.

This section is new. The reference in this section to section one hundred and seven is error. The section should read one hundred and sixty.

Section 162. The provisions of sections one hundred and sixty and one hundred and sixty-one, relating to the election of assessors in townships of the second class, shall not repeal nor affect the provisions of any statute providing for the election of assistant assessors for the performance of duties relating to elections.

This section is new. Assistant assessors for the performance of election duties are provided for by the act of June 16, 1891, P. L. 298, as amended by Act of April 20, 1917, P. L. 87.

(e) Tax Collector.

Section 170. At the municipal election in the year one thousand nine hundred and seventeen, and at the municipal election every four years thereafter, the qualified electors of each township of the second class shall elect one tax collector to serve for a term of four years, from the first Monday of January next succeeding such election.

Drafted from part of Sec. 1, Act of June 6, 1893, P. L. 333.

Section 171. Whenever a township of the second class is created by the division of a township of the first or second class, under the provisions of chapter three, article four of this act; or whenever a township of the second class is created by re-establishment from a township of the first class, as provided by chapter three, article three of this act; or whenever a township of the second class is erected, under the provisions of chapter three, article one of this act, and, in the latter case, the court so orders,—the qualified electors of such township shall, at the next municipal election, elect one tax collector, for either of the following terms; to wit,—If such election occurs in the year in which an election for tax collector is held under the provisions of section one hundred and seventy of this act, then such tax collector shall be elected for a term of four years. If such election occurs in a year when no tax collector is elected under the provisions of said section one hundred and seventy, then such tax collector shall be elected for a term of two years.

All tax collectors elected under this section shall hold their office for a term of two or four years, as the case may be, from the first Monday of January next following their election.

At the municipal election preceding the expiration of the term of any of the aforesaid tax collectors, and at the municipal election every four years thereafter, a tax collector shall be elected for a term

of four years, to hold office from the first Monday of January next succeeding such election.

This section is new.

(f) Vacancies in Office.

Section 180. If the electors of any township of the second class shall fail to choose a township supervisor, or if any person elected to such office shall neglect or refuse to serve therein, or if a vacancy shall occur in the office by death, resignation, or otherwise, the court of quarter sessions shall, upon the presentation of a petition signed by a supervisor and not less than ten voters who are owners of real estate in the township, appoint a person to fill the vacancy for the unexpired term of the person whose place he is appointed to fill.

In all cases where a vacancy occurs in the board of township supervisors from any cause, and within a reasonable time thereafter no petition for the appointment of a person to fill such vacancy has been presented to the court, the two remaining supervisors may appoint a successor to fill the office for the unexpired term. When a vacancy is filled by the remaining supervisors, they shall, within fifteen days thereafter, certify such appointment to the clerk of quarter sessions.

Drafted from Sec. 83, Act of April 15, 1834, P. L. 537, and Sec. 16, Act of July 22, 1913, P. L. 915.

Section 181. When a vacancy occurs in the office of township auditor in any township of the second class by reason of death, resignation, removal from the township, or otherwise, the court of quarter sessions shall appoint a suitable person to fill such vacancy for the unexpired term of the person whose place he is appointed to fill.

Drafted from Sec. 21, Act of March 11, 1842, P. L. 62, and Sec. 83, Act of April 15, 1834, P. L. 537.

Section 182. Vacancies in the office of assessor in townships of the second class shall be filled in the manner now provided by law.

This section is new, but is declaratory of existing law. For provisions of the existing law relating to this subject, see the chapter on taxation in the appendix, subdivision (b) under the subject of assessors, sections 1544 to 1546 inclusive.

Section 183. If the electors of any township of the second class shall fail to choose a tax collector, or if any person elected to such office shall fail to qualify, or if a vacancy shall occur in the office by death, resignation, or otherwise, the court of quarter sessions shall, upon presentation of a petition of any citizen who is a resident of the township, setting forth the facts, appoint a person to fill the

vacancy for the unexpired term of the person whose place he is appointed to fill.

In cases when the person elected to the office shall fail to qualify, the court, before making the appointment, shall declare the office vacant.

Whenever a vacancy exists in the office of tax collector in any township of the second class, and no person resident within the township is willing to accept the appointment to fill such vacancy, the authorities authorized to levy and assess taxes in the township may petition the court of quarter sessions for the appointment of a tax collector, whereupon the court may appoint any citizen of the county to collect such taxes.

Drafted from Sec. 1, Act of June 2, 1895, P. L. 434, Sec. 2, Act of June 25, 1885, P. L. 187, and Secs. 1 and 2, Act of April 27, 1909, P. L. 245. See also the Act of May 17, 1917, P. L. 221 and notes thereunder; sections 1554 and 1555, authorizing the county commissioners to make appointments of tax collectors in cases of vacancies.

This section does not repeal the Act of May 17, 1917, P. L. 221. No person in the township having qualified as tax collector, the court held that the Act of May 17, 1917, P. L. 221, applied, and that the county commissioners should make the appointment on petition: *In re Ogle Township Tax Collector's Bond*, 1 *Somer. L. J.* 69; *s. c.* 30 *D. R.* 141. While this act does not specifically repeal the Act of May 17, 1917, P. L. 221, it does so by implication. The court of quarter sessions is the proper authority to fill a vacancy in the office of tax collector: *North Strabane Township*, 35 *York 90*, *s. c.* 69 *P. L. J.* 579. But see note to section 1554.

CHAPTER VI

TOWNSHIP OFFICERS.

ARTICLE I.

GENERAL PROVISIONS.

Section 190. Every person elected or appointed to any township office in any township of the first or second class shall, before entering upon the duties of his office, take and subscribe an oath or affirmation, before some person having authority to administer oaths, to support the Constitution of the United States and of this Commonwealth, and to perform the duties of his office with fidelity. A copy of such oath or affirmation shall, within ten days thereafter, be filed with the township secretary.

Drafted from Sec. 86, Act of April 15, 1834, P. L. 537. The township clerk mentioned in that section becomes township secretary in this.

Section 191. When any officer or employe of any township of the first or second class is required to give bond for the faithful performance of his duties, and such bond is required to be indorsed by a surety company, the township may pay the premium on such bond.

Drafted from Sec. 1, Act of May 25, 1907, P. L. 225.

Section 192. If any township officer in any township of the first or second class refuses or neglects to perform his duties, the court of quarter sessions, upon complaint in writing by twenty-five citizens, owners of real estate residing in the township or district, may issue a rule upon such officer to show cause why his office should not be declared vacant and another appointed in his stead. Such rule shall be made returnable not less than two weeks from its date of issue. Upon hearing, and proof that the facts alleged in the complaint are true, the court may declare the office vacant and appoint another in his stead, to hold office during the term of the officer deposed.

Drafted from Sec. 1, Act of March 22, 1907, P. L. 27.

Section 193. If such complaint shall allege that the public roads and highways of any township are not maintained in accordance with law, the court may appoint three persons, who shall examine said highways and report to the court their findings. In all such cases the complainants shall first enter security, in such sum as the court may fix, to pay all costs.

Drafted from Sec. 2, Act of March 22, 1907, P. L. 27.

Section 194. All officers of townships of the first and second class shall produce all accounts and records, kept as required by this act, for examination and inspection at any reasonable time, on demand of a duly appointed representative of the State Highway Department.

Drafted from part of Sec. 17, Act of July 22, 1913, P. L. 916. A peremptory mandamus may issue at the suggestion of the district attorney to compel township supervisors to produce their official accounts and records in compliance with this section: *Commonwealth v. Swaney, et al.*, 270 Pa. 589.

Section 195. County associations of township supervisors, commissioners and other persons officially charged with the construction and maintenance of the public roads or streets may be formed. Such associations, when formed, shall hold annual or semiannual conventions, at the county-seats of the respective counties or some other suitable place within the county, for the purpose of considering and discussing questions and subjects pertaining to the best methods for the construction, improvement, and maintenance of the public highways and bridges.

Drafted from Sec. 1, Act of May 8, 1913, P. L. 159.

Section 196. The supervisors of townships of the second class and commissioners of townships of the first class shall attend such conventions whenever possible. Each township supervisor or commissioner attending such convention shall receive a certificate, signed by the presiding officer and acting secretary of the convention, attesting his presence at the convention. Such certificate shall entitle him to collect from the treasurer of the board of supervisors or commissioners the sum of three dollars per day for each days attendance, and mileage at the rate of four cents per mile traveled, to be computed by the route usually traveled from his place of residence to the place where the convention is held. No township supervisor or commissioner shall be paid for more than two days attendance in any one year.

(Amendment of March 31, 1921, P. L. 86). This section was drafted from Sec. 2, Act of May 8, 1913, P. L. 159. The amendment of 1921 increased the compensation for attendance from two dollars to three dollars per day and the mileage from three cents to four cents per mile.

This same section was twice amended by the legislature of 1921. See the section immediately following.

Section 196. The supervisors of townships of the second class, commissioners of townships of the first class, and the auditors of townships of the first and second class, shall attend such conventions whenever possible. Each township supervisor or commissioner and auditor, attending such convention shall receive a certificate, signed by the presiding officer and acting secretary of the convention, at-

testing his presence at the convention. Such certificate shall entitle him to collect from the treasurer of the board of supervisors or commissioners the sum of three dollars per day, for each day's attendance, and mileage at the rate of four cents per mile traveled, to be computed by the route usually traveled from his place of residence to the place where the convention is held. No township supervisor or commissioner or auditor shall be paid for more than two days' attendance in any one year.

(Amendment of May 16, 1921, P. L. 564, Sec. 2). Drafted from Sec. 3, Act of May 8, 1913, P. L. 159. The amendment of May 16, 1921, made for the attendance of auditors at conventions.

Section 197. The officers of the association shall consist of a president, two vice-presidents, a secretary, and a treasurer, all of whom, except the secretary, shall be members of the association, and shall hold office for one year, or until their successors are chosen. If desirable, the secretary may be a person not a regular member of the association, and may be paid for his services, such compensation, not exceeding ten dollars per annum, as the other officers may determine. Every township supervisor and commissioner attending such convention may vote in the election of officers. The mayor of any city, the burgess of any borough, or their duly appointed representative, the county commissioners, and the judges of the court in the county, the township commissioner of the State Highway Department, the assistant engineers of the division of township highways, and the superintendent of State Highways in charge of such county, shall be eligible to membership and to hold office, but shall not be entitled to a vote.

(Amendment of May 16, 1921, P. L. 564, Sec. 2). Drafted from Sec. 3, Act of May 8, 1913, P. L. 159. The amendment of May 16, 1921, made the township commissioner of the State Highway Department the assistant engineers of the division of township highways and the Superintendent of State Highways in charge of said county eligible to membership.

Section 198. The county treasurer shall pay to the treasurer of such association, from the county funds, the necessary expenses incurred for the holding of such annual or semiannual convention, including the necessary expenses of the secretary. The total sum thus paid by the treasurer of any county shall not exceed one hundred and twenty-five dollars a year. No payment shall be made to the treasurer of such association until he has presented to the county treasurer an itemized statement of such expenses, verified by affidavit. Within thirty days after every such convention the treasurer of such association shall file with the county treasurer an itemized statement, under oath, showing when and where such convention was held, the number of township supervisors and commissioners present, and all the expenses connected with such convention, together with proper vouchers for all such expenses.

Drafted from Sec. 4, Act of May 8, 1913, P. L. 159.

CHAPTER VI

TOWNSHIP OFFICERS.

ARTICLE II.

TOWNSHIP COMMISSIONERS.

Section 210. The township commisssioners shall organize on the first Monday of January of each even-numbered year following their election. They shall assemble for such purpose at their place of meeting at seven-thirty o'clock post meridian. Until otherwise designated by ordinance, the place of meeting shall be the oldest polling-place in the township.

The board shall organize by the election of one of their number as president. The president shall preside at all meetings of the board, and perform such other duties as are specified in this act or which may be prescribed by ordinance.

If a majority of the commissioners shall not attend at the organization meeting, those present may adjourn the meeting from day to day until a majority attend.

Drafted from part of Sec. 1, Act of June 5, 1913, P. L. 424 amending
Sec. 6, Act of April 28, 1899, P. L. 104.

Section 211. The board shall meet at least once a month, at such time and such place as may be designated by ordinance. A majority of the members of the board shall constitute a quorum.

Drafted from part of Sec. 1, Act of June 5, 1913, P. L. 424 amending
Sec. 6, Act of April 28, 1899, P. L. 104.

Section 212. Each township commissioner shall receive a salary of sixty dollars per year, payable quarterly, as full compenstion for the duties imposed by the provisions of this act. A proportionate amount shall be deducted from the salary of any township commissioner for each regular meeting of the board of township commissioners which he fails to attend.

Drafted from part of Sec. 1, Act of June 1, 1915, P. L. 684, amending
Sec. 4, Act of April 28, 1899, P. L. 104.

Section 213. The board of township commissioners may appoint one or more supervisors or engineers of highways, and by ordinance specify their duties and fix their salaries. All such officers shall hold office at the pleasure of the board. The board shall employ a sufficient number of workmen, mechanics, and laborers for the proper care of the public roads.

Drafted from part of Sec. 10, Act of April 28, 1899, P. L. 104.

Section 214. The township commissioners shall annually, on or before the first day of February in each year, make a sworn statement to the State Highway Commissioner, on blanks furnished to them by the State Highway Commissioner, of the whole amount of tax levied during the preceding year for road and bridge purposes, and the total amount of taxes collected during the year for road and bridge purposes. They shall specify, in such report, the amount expended for maintenance or repairs of roads and bridges, for opening and building new roads and bridges, and for macadamizing or otherwise permanently improving roads, the number of miles of roads thus made, and the total number of miles of township roads in the township. Such report shall also contain such other matters and things as the State Highway Commissioner may require.

(Amendment of May 16, 1921, P. L. 564, Sec. 3). This section is new.

CHAPTER VI

TOWNSHIP OFFICERS.

ARTICLE III.

TOWNSHIP SUPERVISORS, TOWNSHIP SUPERINTENDENT, AND ROADMASTERS.

Section 230. The general supervision of road affairs in every township of the second class shall be in the hands of three qualified electors of the township, who shall be styled township supervisors.

Drafted from Sec. 4, Act of July 22, 1913, P. L. 915. This section defines the duties of supervisors and road masters to be practically the same, as those contained in the Acts of June 13, 1836, P. L. 551, and June 23, 1897, P. L. 194. There is nothing in the act of July 8, 1919, P. L. 770, that relieves them from these duties: *Benedict v. Fulton Township, et al*, 37 *Lanc. L. R.* 367; *s. c.* 30 *D. R.* 433.

Section 231. The supervisors of each township of the second class shall meet, at the place where the auditors of the township meet to perform their duties, on the first Monday of December of each year. The township supervisors shall organize as a board by electing one of their number as chairman. The board shall appoint a treasurer and a secretary, who may or may not be the same person, and who may or may not be a member of the board, or the board may select a trust company or a banking institution to act as treasurer.

Drafted from part of Sec. 1, Act of June 11, 1915, P. L. 947, amending Sec. 5, Act of July 22, 1913, P. L. 915. The office of tax collector and that of township treasurer cannot be held by the same person at the same time: *Commonwealth v. Graham*, 50 *Pa. C. C.* 402.

Section 232. The township supervisors shall meet for the transaction of business once each month, at a time to be fixed by the board. Two members shall constitute a quorum. Necessary expenses incurred in such meetings, including office rent, stationery, light, and fuel, shall be paid out of the township road funds.

Drafted from part of Sec. 3, Act of June 11, 1915, P. L. 947, amending Act of July 22, 1913, P. L. 915.

Section 233. The board of township supervisors shall keep minutes of their proceedings, and such other books as they may find necessary in the performance of their duties. All such books shall be open for the inspection of any taxpayer at all reasonable times, and shall be submitted to the township auditors when they meet to

audit the accounts of the treasurer and other township officers. The township supervisors shall deliver such books, papers, and accounts to their successors.

Drafted from part of Sec. 17, Act of July 22, 1913, P. L. 915.

Section 234. The board of township supervisors, immediately after their organization, shall divide the township into one or more road districts. They shall employ a superintendent for the entire township, or a roadmaster for each district. Township supervisors may require such superintendent or roadmasters to give bond, with approved security, for the faithful performance of their duties. The superintendent or roadmasters shall be subject to removal by the board of supervisors. The supervisors shall fix the wages to be paid per hour to the superintendent, or roadmasters, and laborers for work on the roads and bridges.

This section shall not prohibit the township supervisors from overseeing and working on the roads themselves. In such case they shall not be required to employ a superintendent or roadmasters.

Drafted from part of Sec. 6, Act of July 22, 1913, P. L. 915.

Section 235. Supervisors who do not act as superintendent or roadmasters shall receive from the township road funds, as compensation, not less than two dollars and fifty cents nor more than four dollars for each monthly meeting which they attend. The amount of the compensation shall be determined by the township auditors. The township auditors shall also allow to the supervisors compensation for making a semiannual inspection of the roads and bridges. The compensation of supervisors, when overseeing or working on roads, shall be fixed by the township auditors, and shall be not less than two dollars and fifty cents, nor more than four dollars, per day.

(Amendment of April 4, 1919, P. L. 43). Drafted from part of Sec. 3, Act of June 11, 1915, P. L. 947, amending sec. 15, Act of July 22, 1913, P. L. 915, and from part of Sec. 6, Act of July 22, 1913, P. L. 915. The purpose of the above amendment was to increase the compensation of supervisors for attendance at monthly meetings and for working on the roads.

Section 236. The township superintendent or the roadmasters, under the direction of the board of supervisors, or the supervisors acting as superintendent or roadmasters, subject to the rules and regulations of the State Highway Commissioner, shall:—

First. Have the general care and superintendence of the improvement of the highways and bridges in the township, except as otherwise specially provided.

Second. Cause such highways and bridges to be kept in repair and free from all obstructions, and give the necessary directions

therefor; and inspect all highways and bridges during the months of April and October of each year, or at such other times as the board of supervisors or the superintendent may direct.

Third. Divide the township into as many sections as may be necessary for the maintenance and repair of the highways and the opening of highways obstructed by snow.

Fourth. Employ or hire such persons, teams, and implements as may be necessary for the maintenance and repair of highways and bridges, and the removal of obstructions caused by snow, subject to the approval of the board of supervisors. Provide for the organization and supervision of the persons so employed, and work on the roads themselves when directed to do so by the board of supervisors. Records shall be kept, and reports made and filed, giving the names of all persons employed, including supervisors, superintendent, or roadmasters; dates on which work was done, and nature and location of same, with compensation paid to each person and the capacity in which he is employed.

Fifth. Construct and keep in repair all sluices and culverts, and keep the waterways, bridges, and culverts open.

Sixth. Cause loose stones lying in the beaten track of every highway to be removed. Stones so removed shall be conveyed to some place from which they will not work back or be brought back into the track by other implements used in repairing or maintaining such highways.

Seventh. Report monthly to the board of supervisors, which report shall contain the matter in the form to be prescribed by the State Highway Commissioner.

Eighth. Attend road meetings and conventions when directed to do so by the board of supervisors.

Ninth. Perform such other duties and have such other powers as may be imposed or conferred by law or the rules and regulations of the State Highway Commissioner.

Drafted from Sec. 7, Act of July 22, 1913, P. L. 915.

Section 237. The board of township supervisors may make a contract for the improvement and keeping in repair of not more than ten miles of road. No such contract shall extend over a period of more than four years, nor shall it be given unless approved of and signed by at least two members of the board of township supervisors. Every contractor for road work shall give bond for the amount of such contract, and sign specifications furnished by the township supervisors for the building and care of such contract roads.

Drafted from part of Sec. 6, Act of July 22, 1913, P. L. 915.

Section 238. The board of township supervisors shall annually, on or before the first day of January in each year, make a sworn statement to the State Highway Commissioner, on blanks furnished to them by the State Highway Commission, of the whole amount of tax levied during the preceding year for road purposes and the total amount of road taxes collected during the year. They shall specify in such report the amount expended for maintenance or repairs of roads, for opening and building new roads, and for macadamizing or otherwise permanently improving roads; the number of miles of roads thus made, and the total number of miles of township roads in the township. Such report shall also contain the names and addresses of the chairman, members, and secretary and treasurer of the board, and such other matters and things as the State Highway Commissioner may require.

Drafted from part of Sec. 21, Act of July 22, 1913, P. L. 915.

Section 239. It is unlawful for any township supervisor, superintendent, or roadmaster to be interested, directly or indirectly, in any purchase made or contract relating to roads and bridges, except as provided for in this act, or to furnish any materials therefor. Any such person knowingly violating the provisions of this section shall be guilty of a misdemeanor. Upon conviction thereof, any such person shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to be imprisoned for a term not exceeding six months, or both, and shall forfeit his office.

Drafted from part of Sec. 18, Act of July 22, 1913, P. L. 915.

Section 240. Any township supervisor, township superintendent, roadmaster, or contractor, employed to work on the roads, bridges, and highways of any township of the second class, who shall violate any of the provisions of this act, other than those for the violation of which specific penalties are provided, or who shall fail, neglect, or refuse to carry out the provisions of this act, shall, upon conviction before a justice of the peace, be sentenced to pay a fine of not more than fifty dollars, to be collected in the name of the township as other debts of like amount are collected. All such fines shall be paid to the township treasurer, for the use of the road fund.

Drafted from Sec. 19, Act of July 22, 1913, P. L. 915, and Sec. 92, Act of April 15, 1834, P. L. 537. Section 19 of the Act of July 22, 1913, P. L. 915, declared all violations of that act to be misdemeanors, and upon conviction provided a penalty of fifty dollars, to be collected in the name of the township, as other debts of like amount, and paid to township treasurer, for the use of the road fund of said township. The utmost penalty that could be enforced was that provided by the act, which remains the same under this section. Such misfeasance as the failure of supervisors to properly construct and maintain highways within their township is no longer

a misdemeanor, and therefore no longer the subject of indictment under the statute. The jurisdiction now by the statute is in the justice of the peace: *Comm. v. Adsit, et al*, 68 P. L. J. 651, s. c. 49 Pa. C. C. 562, 35 York 88, 30 D. R. 760; *Comm. v. Greenwood Township Supervisors*, 13 M. L. R. 39, s. c. 30 D. R. 536; *Comm. v. Ritchey, et al*, 50 Pa. C. C. 624. The use of the word "misdemeanor" in a statute does not necessarily mean that the crime defined was an indictable offense at common law: *Allen v. Commonwealth*, 77 Super. Ct. 244.

Section 241. The township supervisors or township superintendents, elected or appointed in pursuance of this act, shall have all the powers and shall perform all the duties imposed by existing laws on supervisors of roads and bridges and highways and road commissioners, or other officers having in charge the township roads, and shall be subject to all responsibilities and penalties imposed upon such officers.

Drafted from Sec 20, Act of July 22, 1913, P. L. 915, and part of Sec. 90, Act of April 15, 1834, P. L. 537.

CHAPTER VI

TOWNSHIP OFFICERS.

ARTICLE IV.

TOWNSHIP TREASURER.

(a) General Provisions.

Section 260. Whenever any moneys are collected in any township of the first or second class, for any special purpose, and are paid into the hands of the treasurer of such township, it shall be unlawful for such treasurer to apply such moneys, or any part thereof, to any purpose other than that for which such moneys were collected. Every such misapplication shall be a misdemeanor. Upon conviction of such offense, the treasurer shall be punished by a fine of not less than the amount so misapplied, or by imprisonment for not less than three months and not more than one year.

Drafted from Sec. 1, Act of May 16, 1857, P. L. 535.

Section 261. If any township treasurer of any township of the first or second class shall neglect or refuse to perform any of the duties of his office, he shall be fined in a sum not exceeding one hundred dollars, and shall be disqualified from holding the office.

Drafted from Sec. 98, Act of April 15, 1834, P. L. 537.

(b) Of Townships of the First Class.

Section 270. The treasurer of each township of the first class shall give bond, in a sum to be prescribed by ordinance, and at least equal to the probable amount of the annual township tax. Such bond shall be subscribed by sureties approved by the township commissioners, or by a surety company duly authorized to do business in this Commonwealth. The bond given by the treasurer shall be conditioned for the faithful performance of the duties of his office, for a just account of all moneys belonging to the township funds that may come into his hands from taxation or otherwise, and payment over thereof only in the manner prescribed by law; for the delivery to his successor in office of all papers, books, documents, and other things held in right of his office, and for the payment to such successor of any balance in money remaining in his hands or charged against him in the settlement of his accounts. Said bond shall be filed with the township commissioners

Drafted from parts of Sec. 13, Act of April 28, 1899, P. L. 104, and Sec. 5, Act of April 27, 1909, P. L. 198.

Section 271. The township treasurer shall receive for his duties as treasurer and tax collector for the township a sum equal to five per centum of all township taxes received or collected by him, and, in addition thereto, a sum equal to one per centum on all other moneys received or collected by him for the township, unless a different rate be fixed by ordinance of the township commissioners passed thirty days prior to his election.

Drafted from Sec. 1, Act of June 7, 1907, P. L. 452, amending Sec. 14, Act of April 28, 1899, P. L. 104.

Section 272. Every township treasurer shall take charge of all township moneys, and keep distinct accounts of all sums received from taxes and other sources, which accounts shall at all times be open to the inspection of the commissioners and township auditors. He shall annually state his accounts, and lay the same, together with the books and the vouchers, before the township auditors for settlement.

Drafted from part of Sec. 13, Act of April 28, 1899, P. L. 104.

Section 273. The township treasurer shall pay out the moneys, coming into his hands for the fiscal year, only on orders numbered in the order of their issue, signed by the president and attested by the secretary of the board, and designating the appropriation out of which the orders shall be paid. Any township treasurer who shall pay out moneys in his hands except upon such orders, or shall pay out moneys in excess of the appropriations, shall be allowed no credit in the settlement of his accounts for the sum or sums so paid out, nor shall he have any claim or right of action against the township therefor.

Drafted from Sec. 2, Act of April 27, 1909, P. L. 198.

Section 274. The township treasurer in townships of the first class, by virtue of his office as treasurer, shall be tax collector. He shall collect all state, county, township, school, poor, and other taxes, within such township of the first class, levied by authorities empowered to levy taxes. He shall, in addition to the powers, duties, and responsibilities enumerated in chapter eight, article one, have all the powers, perform all the duties, be subject to all the obligations and responsibilities, and receive the same compensation for collecting such taxes other than township taxes, as are now by law vested in, conferred upon, or imposed upon or received by, collectors of the several classes of taxes hereinbefore mentioned.

It is the purpose and intent of this section that no taxes shall be collected in any township of the first class except by the treasurer of the township.

Drafted from parts of Secs. 1 and 2, Act of May 28, 1907, P. L. 273.

Section 275. The treasurer of every township of the first class shall, before he enters upon the duties of his office as collector of taxes, take and subscribe an oath of office and file the same in the office of the court of quarter sessions, and shall annually enter into a bond to the Commonwealth, in not more than the amount of taxes charged and assessed in the duplicates, with at least two sufficient sureties or one trust or bonding company. The bond shall be approved by the court of quarter sessions and shall be filed in the office of the clerk of said court. The condition of the bond shall be, that the treasurer shall well and truly pay over or account for the whole amount of taxes charged and assessed in the duplicates which shall be delivered to him. This bond does not cover the collection and payment over of township or school taxes.

Drafted from Sec. 1, Act of May 8, 1909, P. L. 474, amending Sec. 1, Act of June 25, 1885, P. L. 187; and Sec. 1, Act of June 6, 1893, P. L. 333. The bond of the treasurer as collector of township taxes is provided for in Sec. 270 and the School Code provides for his bond as collector of school taxes.

(c) Of Townships of the Second Class.

Section 285. The treasurer appointed by the board of township supervisors in townships of the second class, if an individual, shall give bond, with at least two sufficient sureties to be approved by the auditors of the township, conditioned that the treasurer shall well and truly account for and pay over all moneys collected for the township, and all moneys paid by the State, according to the provisions of this act and received by him, only upon a written order signed by two members of the board of supervisors, for the delivery to his successor in office of all books, papers, and documents, for the payment to him of any balance of money belonging to the township that may remain in his hands, and for the faithful performance of the duties of his office.

Drafted from parts of Sec. 2, Act of June 11, 1915, P. L. 947, amending Sec. 9, Act of July 22, 1913, P. L. 915; and Sec. 95 of the Act of April 15, 1834, P. L. 537. These two sections were combined so as to cover all moneys received.

Section 286. The township treasurer for townships of the second class shall receive, as compensation for his services, a certain percentage on all moneys received and paid by him, which rate shall be

settled by the supervisors of the township, with the approbation of the township auditors.

In no case shall the combined amount paid to the secretary and treasurer exceed two per centum of the money paid out by the treasurer, except when the amount would be less than ten dollars (\$10.00).

Drafted from Sec. 97, Act of April 15, 1834, P. L. 537, and part of Sec. 1, Act of June 11, 1915, P. L. 947, amending Sec. 5, Act of July 22, 1913, P. L. 915. The township treasurer and secretary may receive a combined salary not exceeding two per centum of the money paid out by the treasurer, including borrowed money, regardless of the source from which it was obtained: *Manor Township Auditor's Report, 37 Lanc. L. R. 167, s. c. 29 D. R. 1001.*

Section 287. The township treasurer shall receive all moneys due the township, and keep distinct accounts of all sums received from taxes and other sources, which accounts shall at all times be open to the inspection of the supervisors of the township. He shall pay out all moneys received by him on orders drawn by the supervisors of the township. All orders shall be on blanks prepared and furnished by the State Highway Commissioner. He shall annually state his accounts, and lay the same, together with the vouchers, before the township auditors for settlement.

Drafted from Sec. 96 Act of April 15, 1834, P. L. 537, and part of Sec. 2, Act of June 11, 1915, P. L. 947, amending Sec. 9, Act of July 22, 1913, P. L. 915.

CHAPTER VI

TOWNSHIP OFFICERS.

ARTICLE V.

TOWNSHIP SECRETARY.

(a) Of Townships of the First Class.

Section 300. The board of commissioners in townships of the first class shall elect a secretary, who must be a qualified voter of the township, and not a member of the board. He shall act as secretary of the board, shall be the official keeper of the minutes, and shall perform such other duties as are prescribed by ordinance of the board. He shall provide suitable books, the cost of which shall be paid out of the township funds, wherein he shall enter all matters of which he is required to keep a record. His salary shall be fixed by ordinance.

Drafted from Sec. 19, Act of April 28, 1899, P. L. 104, and Sec. 100, Act of April 15, 1834, P. L. 537.

Section 301. The secretary of townships of the first class shall keep a record of the appropriations made by the township commissioners and the amounts chargeable thereto. He shall furnish to any person, so requesting, a statement showing the amount available for future charges against any appropriated fund. Any secretary who shall knowingly furnish an incorrect statement shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars.

Drafted from Sec. 1, Act of June 3, 1911, P. L. 626.

Section 302. The minute-book and other records and documents of every township of the first class shall be open to the inspection of any taxpayer thereof, his, her, or its agent, upon demand therefor.

Drafted from Sec. 3, Act of June 3, 1911, P. L. 626, and Sec. 101, Act of April 15, 1834, P. L. 537. The latter section provided for the payment of a fee of ten cents for each search which has been eliminated in this section.

Section 303. The township commissioners in townships of the first class, except in those counties having a board for the assessment and revision of taxes for State and county purposes, shall cause the secretary to keep record books, in the form of the indexes kept in the office of the recorder of deeds for the indexing of deeds. In such books the secretary shall enter, when notified by the recorder

of deeds of the county as now provided by law, each deed or conveyance of any tract, piece, parcel, or lot of real estate within the township, noting the names of the grantor and grantee, the acreage of the land conveyed, if mentioned, the consideration mentioned in the deed, and the election district or districts in which the same is located, and, if the land conveyed is a lot in a recorded plan, the number by which the same may be designated on the plan. In one such record book conveyances shall be noted in the name of the grantor first, and in another they shall be noted in the name of the grantee.

Drafted from Sec. 1. of the Act of May 14, 1915, P. L. 489, amending Sec. 1, Act of April 29, 1909, P. L. 275. The remaining sections of the act of April 29, 1909, P. L. 275, are contained in the appendix in chapter on taxation, subdivision (c), sections 1547, 1548, and 1549.

(b) Of Townships of the Second Class.

Section 310. The secretary in each township of the second class shall be clerk to the board of supervisors. He shall keep a record of the proceedings of said officers, and shall receive such compensation therefor as shall be fixed by the township auditors. The combined amount paid to the secretary and treasurer shall not exceed two per centum of the money paid out by the treasurer, except where the same would amount to less than ten dollars, (\$10.00).

Drafted from Sec. 99, Act of April 15, 1834, P. L. 537, and Sec. 1, Act of June 11, 1915, P. L. 947, amending Sec. 5, Act of July 22, 1913, P. L. 913. The township treasurer and secretary may receive a combined salary not exceeding two per centum of the money paid out by the treasurer, including borrowed money, regardless of the source from which it was obtained: *Manor Township Auditor's Report, 37 Lanc. L. R. 167; s. c. 29 D. R. 1001.*

Section 311. The secretary shall provide a suitable book or books for the purpose of entering therein all matters of which he is required to keep a record. Such books shall be furnished by the State Highway Department.

Drafted from Sec. 100, Act of April 15, 1834, P. L. 537. The name of township secretary has been substituted for that of township clerk in conformity with the provisions of the Act of June 14, 1911, P. L. 942.

Section 312. The books of the secretary shall be open to the inspection of any person who may have occasion to search therein.

Drafted from Sec. 101, Act of April 15, 1834, P. L. 537. The name of township secretary has been substituted for that of township clerk in conformity with the provisions of the Act of June 14, 1911, P. L. 942.

The fee of ten cents provided by the original act was eliminated.

CHAPTER VI

TOWNSHIP OFFICERS.

ARTICLE VI.

TOWNSHIP AUDITORS.

Section 325. The auditors of townships of the first and second class shall meet annually, on the day following the day which is fixed by this act for the organization of the township supervisors or the township commissioners of the several townships, respectively; and shall audit, settle, and adjust the accounts of the supervisors, commissioners, roadmasters, treasurer, and tax collector of the township. Two auditors shall constitute a quorum.

Any officer whose act or neglect has contributed to the financial loss of any township shall be surcharged by the auditors with the amount of such loss.

Each auditor shall receive two dollars per diem for each day necessarily employed in the duties of his office, to be paid out of the funds of the township.

Drafted from Sec. 2, Act of May 20, 1913, P. L. 254, amending Sec. 1, Act of June 1, 1911, P. L. 865, and from Sec. 1, Act of May 3, 1909, P. L. 392, and Sec. 102 of the Act of April 15, 1834, P. L. 537.

Section 326. The auditors of each township may issue subpoenas to obtain the attendance of the officers whose accounts they are required to adjust, their executors and administrators, and of any persons whom it may be necessary to examine as witnesses, and to compel their attendance by attachment, in like manner as any court of common pleas may in cases depending before them, and may also compel the production of all books, vouchers, and papers, relative to such accounts. Such subpoena and attachment shall be served and executed by the sheriff or coroner of the county, as the case may require.

The auditors of each county may administer oaths and affirmations to all persons brought or appearing before them, whether accountants, witnesses, or otherwise. All persons guilty of swearing or affirming falsely on such examinations shall be guilty of perjury.

Drafted from Secs. 50, 51 and 105, Act of April 15, 1834, P. L. 537.

Section 327. The auditors shall complete their audit, settlement, and adjustment within as short a time as possible. They shall, within ten days thereafter, publish, by advertisement in at least

one newspaper of general circulation, printed in the township or county, a concise itemized statement of the receipts and expenditures of the several officers for the preceding fiscal year. They shall also, within ten days thereafter, file a copy of such statement with the secretary, and another copy of such statement with the clerk of the court of quarter sessions. When any two offices are exercised by the same person, only one statement shall be required.

Drafted from Sec. 2, Act of May 3, 1909, P. L. 392, and Sec. 3, Act of May 20, 1913, P. L. 254, amending Sec. 2, Act of June 9, 1911, P. L. 865.

The proviso at the end of Sec. 2, Act of May 3, 1909, P. L. 392, has been omitted.

Section 328. The auditors shall cancel all orders and vouchers presented to them, which they find have been paid, by writing the word "audited" on the face thereof.

Drafted from Sec. 5, Act of May 3, 1909, P. L. 392.

Section 329. Any auditor neglecting or refusing to comply with the preceding provisions of this article shall pay a penalty of one hundred dollars, to be recovered by suit, instituted in the name of the township, upon the complaint of any taxpayer, in the same manner as debts of like amount are recoverable. Any penalty recovered shall be paid into the treasury of the township.

Drafted from Sec. 6, Act of May 3, 1909, P. L. 392.

Section 330. The auditors, in case of a disagreement with any official or board of officials whose accounts they are required to audit, may employ an attorney. Such attorney shall not be employed until reasonable effort to reach an agreement has been made, and only after notice of their intention so to do has been given to said official or board of officials. The compensation for such attorney shall be fixed by the auditors, and shall not exceed the sum of ten dollars per day, nor total in any case more than thirty dollars, unless when an appeal is taken to the courts, in which case the court shall fix the additional compensation for the attorney. The compensation for said attorney shall be paid out of the fund the settlement of which is in dispute, by a warrant drawn by the auditors upon the treasurer of such fund, immediately upon the final settlement of the account.

Drafted from Secs. 1 and 2, Act of April 27, 1909, P. L. 261.

Section 331. Whenever any person is charged with a sum of money by the report of the township auditors any taxpayer of the township may enforce the collection thereof, for the benefit of the township, by action or execution, upon filing in the court of common

pleas a bond, with one or more sureties, conditioned to indemnify the township from all costs which may accrue in the proceedings.

Drafted from Sec. 1, Act of May 31, 1913, P. L. 394.

Section 332. The township, or any taxpayer thereof on its behalf, or any officer whose account is settled or audited by the township auditors, may appeal from any settlement or audit to the court of common pleas, within thirty days after the settlement has been filed in the court of quarter sessions.

Drafted from Sec. 4, Act of May 20, 1913, P. L. 254, amending Sec. 3, Act of June 9, 1911, P. L. 865.

Section 4 of the Act of 1913 seemed to supply Sec. 3 of the Act of May 3, 1909, P. L. 392, Sec. 104 of the Act of April 15, 1834, P. L. 537, Sec. 19 of the Act of April 14, 1851, P. L. 612, and Sec. 1 of the Act of May 1, 1875, P. L. 88.

Section 333. No appeal by a taxpayer or officer shall be allowed unless the applicant shall enter into recognizance to prosecute the same with effect, and to pay all costs accruing thereon, in case, if the appellant be a taxpayer, he shall fail to obtain a final decision more favorable to the township than that awarded by the auditors, or, in case the appellant be an accounting officer, he shall fail to obtain a final decision more favorable to the officer than that awarded by the auditors.

Drafted from Sec. 4, Act of May 20, 1913, P. L. 254, amending Sec. 3, Act of June 9, 1911, P. L. 865.

Section 334. Whenever an appeal has been taken from the report of the auditors by the township, or by any person charged in such report with any sum of money, any taxpayer of the township may intervene in such appeal, and either prosecute the same, on its behalf, or defend it against the appeal of the person so charged. No taxpayer shall intervene unless he shall file in the court of common pleas a bond, with one or more sufficient securities, conditioned to indemnify the township against all costs accruing by reason of such intervention.

Drafted from Sec. 2, Act of May 31, 1913, P. L. 394.

Section 335. When more than one appeal from the report of the auditors is taken, whether by the township, an officer or officers thereof, or by a taxpayer, the court shall, upon petition of any party interested, direct the several appeals to be disposed of in a single proceeding.

Drafted from Sec. 2, Act of April 21, 1915, P. L. 162.

Section 336. Any person interested may order the appeal upon the argument list, and evidence may be taken before any person author-

ized to administer oaths, upon rule for that purpose served upon the opposite party.

Drafted from Sec. 3, Act of May 31, 1913, P. L. 394.

Section 337. Whenever any matter of fact is in dispute the court of common pleas is authorized to frame an issue for the trial thereof.

Drafted from Sec. 4, Act of May 20, 1913, P. L. 254, amending Sec. 3, Act of June 9, 1911, P. L. 865, and from Sec. 3, Act of May 31, 1913, P. L. 394. The remaining provisions of these sections have been used in the preceding sections of this article.

Section 338. The accounts of the officer or officers in question may be investigated de novo. The figures and facts found and stated by the auditors in their report of audit shall be taken as prima facie correct, as against any such officer, and the burden shall be upon each officer whose accounts are in question to establish the validity of the credits which he claims.

Drafted from Sec. 1, Act of April 21, 1915, P. L. 162.

Section 339. After hearing, the court shall file its findings of fact and law and enter judgment in accordance therewith, and the judgment so entered may be enforced by any appropriate proceedings by the party prevailing.

Drafted from Sec. 3, Act of May 31, 1913, P. L. 394. The remaining provisions of this section have been used in the preceding sections of this article.

Section 340. In all cases of appeal from the report or audit of township auditors to the court of common pleas, the costs shall abide the event of the suit as in other cases.

Drafted from Sec. 6, Act of May 6, 1844, P. L. 564.

Section 341. Any person interested may except to the rulings of the courts, and may appeal therefrom to the Superior or Supreme Court, as in other cases.

Drafted from Sec. 4, Act of June 9, 1911, P. L. 865.

Section 4 of the Act of 1911 supplies the Act of May 11, 1901, P. L. 185, so far as it relates to townships and also Sec. 4 of the Act of May 3, 1909, P. L. 392.

Section 4 of the Act of 1911 permits exceptions to any ruling or decision of the court of common pleas on appeal. There is no authority to except to the form or substance of the auditor's report. *Dallas Borough Auditor's Report, 23 D. R. 1068.*

CHAPTER VI

TOWNSHIP OFFICERS.

ARTICLE VII.

TOWNSHIP POLICE.

Section 355. Upon the petition of twenty-five taxpayers of any township, to the court of quarter sessions, representing that the safety of the citizens and the security of property requires the appointment of one or more deputy constables to act as policemen, the court shall consider said petition. If satisfied of the reasonableness and propriety of the application, the court shall make appointments for such time as to it may seem proper.

Keepers of jails, lockups, or station-houses shall receive all persons arrested by such policemen for the commission of any offence against the laws of this Commonwealth within the township for which they are appointed.

Drafted from Sec. 1, Act of May 9, 1889, P. L. 156.

See also Secs. 1508 to 1513 inclusive for the Act of April 5, 1917, P. L. 47, relating to the same subject.

Where a deputy constable has been appointed by the court under the township code, a petition for a decree authorizing the supervisor to appoint "one or more electors to act as policemen," as provided by the Act of April 5, 1917, P. L. 47, will be refused, when no reason is assigned for the removal of the incumbent or any necessity shown for an additional officer. *Appointment of Special Policemen for Second Class Township, 22 Lack. J. 173.*

Section 356. Such deputy constables shall possess and exercise all the powers of policemen of cities, in the several townships in which they are appointed.

Drafted from part of Sec. 1, Act of May 9, 1889, P. L. 156.

Section 357. Such deputy constables shall, when on duty, wear a shield with the words "township police" and the name of the township inscribed thereon.

Drafted from Sec. 2, Act of May 9, 1889, P. L. 156.

Section 358. The deputy constables shall be paid such compensation out of the township funds as may be approved by the court of quarter sessions. They may be discharged whenever the court appointing them is satisfied that their services are no longer required.

Drafted from Sec. 3, Act of May 9, 1889, P. L. 156.

The provision that the compensation of the deputy constable shall be paid out of the township funds has been inserted in view of the holding in *Adams v. Swendon Township, 9 D. R. 459, and Commonwealth ex rel. Saunders vs. Upper Providence Township, 13 D. R. 736.*

CHAPTER VI

TOWNSHIP OFFICERS.

ARTICLE VIII.

TAX COLLECTORS, ASSESSORS, AND ASSISTANT

ASSESSORS.

Section 365. The tax collector of townships of the second class shall collect all state, county, township, school, poor, and other taxes levied within townships of the second class by authorities empowered to levy taxes. He shall, in addition to the powers, duties, responsibilities, and compensation enumerated in chapter eight, article two, have all the powers, perform all the duties, be subject to all the obligations and responsibilities, and receive the same compensation for collecting such taxes other than township taxes, as are now vested in, conferred upon, or imposed upon or received by, collectors of the several classes of taxes hereinbefore mentioned.

This section is declaratory of the existing law.

Section 366. The collector of taxes of townships of the second class shall, before he enters upon the duties of his office, take and subscribe an oath of office and file the same in the office of the court of quarter sessions, and shall annually enter into a bond to the Commonwealth, in not more than the amount of taxes charged and assessed in the duplicates, with at least two sufficient sureties or one trust or bonding company. The bond shall be approved by the court of quarter sessions and shall be filed in the office of the clerk of said court. The condition of the bond shall be, that the collector shall well and truly pay over or account for the whole amount of taxes charged and assessed in the duplicates which shall be delivered to him. This bond does not cover the collection and payment over of school taxes.

Drafted from Sec. 1, Act of May 8, 1909, P. L. 474, amending Sec. 3, Act of June 25, 1885, P. L. 187. It also includes the last provision of Sec. 1, Act of June 6, 1893, P. L. 333.

The provision that the section shall not apply to the bond required for the collection of school taxes has been inserted, as provision for this bond has been made in the School Code of 1911.

The provision that the bond may be approved by "the judge thereof in vacation," was repealed by the Act of June 6, 1893, P. L. 333. *Commonwealth vs. Commissioners of Bedford County*, 6 Supr. Ct. 211. This of course applies to the original section 3 of the Act of 1885.

Quære: Whether the provision was reenacted by the Act of 1909?

Section 1 of the Act of 1909 supplies Section 43 of the Act of April 15, 1834, P. L. 509.

Section 367. The assessors of townships of the first and second class, and the assistant assessors of townships of the first class, whose election is provided for in chapter five of this act, shall have all the powers, perform all the duties, be subject to all the obligations and responsibilities, and receive the same compensation as is provided for by existing law.

This section is declaratory of the existing law, inserted here to complete the chapter on Township Officers.

CHAPTER VII

GENERAL POWERS.

ARTICLE I.

OF TOWNSHIPS OF THE FIRST CLASS.

Section 380. Townships of the first class may—

I. Sue and be sued by the name of the township of.....

II. Take and hold real estate within their limits, and also personal property. Such real and personal estate shall be taken and held only for the benefit of the inhabitants of the township, and for such objects and purposes as township rates and levies are authorized by law to be laid for.

III. Make such contracts as may be necessary for carrying into execution the provisions of this act.

Drafted from Sec. 3, Act of April 15, 1834, P. L. 537.

Section 381. The corporate power of the township of the first class shall be vested in the board of township commissioners. The board shall have power—

Drafted from Par. 1, Sec. 7, Act of April 29, 1899, P. L. 104.

I. To adopt by-laws and ordinances prescribing the manner in which the powers of the township shall be carried out, and generally regulating the affairs of the township. All such ordinances, unless where otherwise provided in this act, shall be published at least once a week for two consecutive weeks in one newspaper of general circulation published in the township, or, if there be no such newspaper, in a newspaper of general circulation published in the municipality nearest to the township. Such ordinance shall not become effective until ten days after the second publication aforesaid.

Drafted from Clause VIII, Sec. 7, Act of April 28, 1899, P. L. 104.

II. To prescribe fines and penalties, not exceeding fifty dollars in any instance, for the violation of township ordinances, which fines and penalties may be collected by suit brought in the name of the township before any justice of the peace, in like manner as debts of like amount may be sued for by existing laws.

Drafted from Sec. 1, Act of April 19, 1905, P. L. 221, amending Sec. 7, Clause IX, Act of April 28, 1899, P. L. 104.

III. To establish and maintain a night-watch and police force, and to define the duties of the same.

Drafted from Sec. 1, Act of July 9, 1901, P. L. 627, amending Sec. 7, Clause V, Act of April 28, 1899, P. L. 104.

IV. To provide for the erection or purchase of a lockup or watch-house, for the detention of vagrants and persons arrested until they can be taken before a justice of the peace for hearing, or be committed to prison or be discharged.

Drafted from Sec. 1, Act of July 9, 1901, P. L. 627, amending Sec. 7, Clause V, Act of April 28, 1899, P. L. 104.

V. To arrest and confine, and to set to work on the roads or elsewhere, all vagrants found in the township.

Drafted from Sec. 1, Act of July 9, 1901, P. L. 627, amending Sec. 7, Clause V, Act of April 28, 1899, P. L. 104.

VI. To take all needful means for securing the safety of persons or property within the township.

Drafted from Sec. 1, Act of July 9, 1901, P. L. 627, amending Sec. 7, Clause V, Act of April 28, 1899, P. L. 104.

VII. To regulate and prohibit shows, circuses, and public amusements of all sorts.

Drafted from Sec. 1, Act of July 9, 1901, P. L. 627, amending Sec. 7, Clause V, Act of April 28, 1899, P. L. 104.

VIII. To purchase tools, implements, machinery, timber, and materials necessary for the making, paving, and repairing of streets and highways, and to employ sufficient number of laborers to make and repair the same.

Drafted from Sec. 10, Act of April 28, 1899, P. L. 104, and Sec. 27, Act of June 13, 1836, P. L. 551.

IX. To prohibit or regulate the running at large of animals.

Drafted from Sec. 7, Clause IV, Act of April 28, 1899, P. L. 104.

X. To pass ordinances taxing the owners and harborers of dogs, and to provide for the destruction of all dogs found at large contrary to any ordinance.

Drafted from Sec. 1, Act of May 14, 1915, P. L. 520.

XI. To make regulations respecting pig-pens, slaughter-houses, manure-pits, drains, cesspools, and manufactories that are offensive, to abate nuisances prejudicial to public health and public safety, and to collect the cost of such abatement from the person responsible.

Drafted from Sec. 7, Clause IV, Act of April 28, 1899, P. L. 104.

XII. To provide, by contract or otherwise, for the collection and removal of ashes and garbage.

Drafted from Sec. 1, Act of June 25, 1913, P. L. 561.

XIII. To erect watering-troughs along the highways, at an expense not exceeding twenty dollars, and to keep the same in repair.

Drafted from Sec. 3, Act of April 28, 1876, P. L. 51.

For additional provisions relating to the erection of watering troughs, see appendix, chapter on roads, highways and bridges, subdivision (q), sections 1852 to 1855 inclusive.

XIV. To establish lights along the highways wherever deemed expedient.

Drafted from Sec. 1, Act of May 24, 1901, P. L. 297, amending Sec. 7, Clause I, Act of April 28, 1899, P. L. 104.

Remaining part of this section will be found under the subject of roads.

XV. To establish lights on and along State highways and turnpike roads running through such townships. No such lights shall be established upon State highways, or upon turnpike roads under the jurisdiction of the State Highway Department, until a permit has first been obtained from the State Highway Commissioner.

Drafted from Sec. 1, Act of July 7, 1913, P. L. 671.

XVI. To take measures for the extinguishment of fires, either by making annual appropriations towards the maintenance of fire-companies or in such other manner as said board of commissioners may deem proper; and to ordain rules and regulations for the government of such fire-companies and their officers, and to regulate the method to be followed in the extinguishment of fire.

Drafted from Sec. 1, Act of May 1, 1913, P. L. 144.

XVII. To enter into contracts with any person or corporation to supply water for fire protection, for a period not exceeding twenty years. No such contract shall be exclusive as against the right of any other water company, nor interfere with the right of such township to erect, maintain, and operate its own water works.

Drafted from Sec. 1, Act of July 9, 1901, P. L. 627, amending Sec. 7, Clause V, Act of April 28, 1899, P. L. 104.

See also Secs. 1180 to 1207 inclusive, and in appendix Chap. XII, Secs. 2009 to 2011 inclusive.

This clause expressly authorizes the township commissioners, of townships of the first class, to enter into contracts with any person or corporation to supply water for fire protection. The Public Service Commission has power to determine the fair and reasonable rates to which the water company is entitled under such a contract: *Springfield Township v. Public Service Commission*, 74 Super. Ct. 217.

XVIII. To purchase and maintain engines for the extinguishment of fire, and to make rules and regulations for the management of same.

Drafted from Sec. 1, Act of July 9, 1901, P. L. 627, amending Sec. 7, Clause V, Act of April 28, 1899, P. L. 104.

XIX. To provide and maintain a suitable place for the housing of engines, hose-carts, and other apparatus for the extinguishment of fire. No such building shall be erected or maintained without obtaining the assent of the electors thereof, expressed at an election to be held at the place, time, and under the same regulations, as provided by law for the holding of municipal elections. At such election the judges, inspectors, and clerks shall receive tickets from the electors, which shall be prepared in the manner prescribed by the general election law. In receiving and counting and in making returns of the votes cast the inspectors, judges, and clerks of said election shall be governed by the laws of this Commonwealth regulating municipal elections, and the vote shall be counted by the court as is now provided by laws for municipal elections. The constables of the township, by direction of the board of township commissioners, shall issue proclamation, ten days prior to date of the municipal election, stating that the qualified electors will vote "For or against building a fire-engine house."

Drafted from Sec. 1, Act of March 18, 1909, P. L. 40.

XX. To appropriate moneys for the expenses of Memorial Day services.

Drafted from Sec. 1, Act of June 25, 1895, P. L. 298.

XXI. To appropriate money or convey land, either independently or in connection with any county, city, town, borough, or township to the Commonwealth of Pennsylvania, for the purpose of assisting the Armory Board of the Commonwealth in the erection of armories for the use of the National Guard, and to furnish water, light, or fuel, free of cost to the Commonwealth, for use in any armory, and to do all things necessary to accomplish the purposes of this clause.

Drafted from Sec. 1, Act of March 15, 1909, P. L. 33.

This clause was incorporated in the code following the decisions in *Dare v. County Commissioners*, 23 Pa. C. C. 646, and *Dreese v. Freed*, 42 Pa. C. C. 242, which hold that the term "municipality" includes a township.

XXII. To take by right of eminent domain, for the purpose of appropriating to themselves, for the use of the National Guard of Pennsylvania, such public lands, easements, and public property as may be in their possession or control, and used or held by them for

any other purpose. Such right, however, shall not be exercised as to any street or highway or wharf, but all other public easements and property may be appropriated and used for the purpose herein provided, any limitation of the use thereof by the township, either by donation, dedication, appropriation, statute, or otherwise, to the contrary notwithstanding.

Drafted from Sec. 1, Act of June 20, 1895, P. L. 332.

This clause was incorporated in the code following the decisions in *Darc v. County Commissioners*, 23 Pa. C. C. 646, and *Dreese v. Freed*, 42 Pa. C. C. 242, which hold that the term "municipality" includes a township.

XXIII. To make regulations for the construction of new buildings and repair of old ones, and to require that before the work begins municipal approval of the plans and specifications therefor be secured, and to provide for the inspection of such construction and repair, including the appointment of one or more building inspectors; to prescribe limits wherein none but buildings of noncombustible material and fire-proof roofs shall be erected or substantially reconstructed or removed thereinto, and to provide penalties for the violation of such regulations. Any building erected, reconstructed, or removed contrary to the provisions of any ordinance passed for any of the purposes specified in this clause, is declared to be a public nuisance and abatable as such.

(Amendment of June 6, 1919, P. L. 424.)

This clause is new.

CHAPTER VII

GENERAL POWERS.

ARTICLE II.

OF TOWNSHIPS OF THE SECOND CLASS.

Section 385. Townships of the second class may—

I. Sue and be sued by the name of the township of.....

II. Take and hold real estate within their limits, and also personal property. Such real and personal estate shall be taken and held only for the benefit of the inhabitants of the township, and for such objects and purposes as townships rates and levies are authorized by law, to be laid for.

III. Make such contracts as may be necessary for carrying into execution the provisions of this act.

Drafted from Sec. 3, Act of April 15, 1834, P. L. 537, so as to restrict its provisions to townships of the second class.

Section 386. The corporate power of townships of the second class shall be exercised by the township supervisors. They shall have power—

Drafted from Sec. 4, Act of April 15, 1834, P. L. 537.

I. To light and illuminate the streets, highways, and other public places of the township with electric lights, gas, or other illuminating medium, and to provide for defraying the cost, charges, and expenses thereof; and for such purposes to enter into contracts or agreements with any person, copartnership, association, or corporation, for a period not exceeding five years, for the purpose of securing and maintaining a supply of light.

Drafted from Sec. 2, Act of April 15, 1909, P. L. 168.

II. On the petition of the owners of a majority of the lineal feet frontage along any highway or portion thereof in any village within the township, to enter into contract with electric, gas, or other lighting companies to light and illuminate the streets, highways, and other public places in said villages with electric light, gas light, or other illuminant.

The township supervisors shall levy, for the maintenance of said lights, an annual tax upon the property abutting upon the said highways and other public places in the district benefited thereby, based upon the assessment for county purposes. Such tax shall be

collected in the same manner as other taxes. The collector of taxes shall receive the same commission as on the road tax. No such tax shall be levied against any farm land, nor against any property the residence upon which shall be more than five hundred feet from such highway.

The township treasurer shall receive all such taxes collected for lighting the highways, shall keep the same in a separate account, and pay out the same only upon orders signed by the chairman of the township supervisors, attested by the secretary. The treasurer shall make a report to the auditors of the township annually.

Drafted from Secs. 1, 2 and 3, Act of May 28, 1913, P. L. 371.

III. On the petition of the owners of a majority of the lineal feet frontage along any highway or portion thereof in any village within the township, to enter into contract with water companies for the placing of fire-hydrants along said highway, for the protection of property from fire.

The supervisors shall levy, for the maintenance of such fire-hydrants and for the purchase of hose, et cetera, an annual tax upon the property abutting upon said highway in the district benefited thereby, based upon the assessment for county purposes. Such tax shall be collected in the same manner as other taxes. The collector shall receive the same commission as on the road tax.

The township treasurer shall receive all such taxes collected for fire protection, and keep the same in a separate account, and pay the same out only upon orders signed by the chairman of the board of supervisors, attested by the secretary. The treasurer shall make a report to the auditors of the township annually.

Drafted from Secs. 1, 2 and 3, Act of May 25, 1907, P. L. 231.

See also on water supply sections 1205 to 1207 inclusive, and in appendix, chapter XLI, sections 2009 to 2011 inclusive.

Where a water company furnishes water for fire protection to the inhabitants of a township of the second class, without having a contract with the supervisors, the township is not responsible for the water tax. The supervisors have no authority to levy a general tax, or to incur indebtedness, for such fire protection service: *Springfield Township v. Public Service Commission*, 74 Super. Ct. 220.

IV. To purchase such timber, material, machinery, road-drags, tools, and implements as shall be necessary for making and repairing roads and bridges, and to employ sufficient number of laborers to make and repair the same.

All contracts for the purchase of power-rollers, traction-engines, stone-crushers, concrete-mixers, or road machines for grading or scraping shall be made only after consultation with the assistant engineer of township highways of the State Highway Department, and no such contract shall be valid unless it shall be approved

and signed by the Township Commissioner of the State Highway Department.

(Amendment of May 16, 1921, P. L. 564.)

Drafted from Sec. 8, Act of July 22, 1913, P. L. 915, and Sec. 27, Act of June 13, 1836, P. L. 551.

This clause was twice amended at the session of 1921.

The purpose of the above amendment was to require the consultation of the assistant engineer of township highways, and the signing of contracts by the township commissioner.

IV. To purchase such timber, material, equipment, machinery, road-drags, tools, and implements as shall be necessary for making and repairing roads and bridges, to employ sufficient number of laborers to make and repair the same, and to contract for the construction, reconstruction, and improvement of roads.

All contracts for the construction, reconstruction, and improvement of roads, and for the purchase of materials used in such work, and for the purchase of equipment and machinery, shall be submitted to the township commissioner of the State Highway Department, for approval or disapproval, before such contracts are actually entered into, and no such contract shall be valid unless it shall be approved and signed by the township commissioner.

No purchase of materials, and no purchase of equipment and machinery, which shall involve the expenditure of more than one hundred dollars (\$100) shall be made except by contract in writing. An itemized report of all purchase of materials, and of all purchases of, and repairs to, equipment or machinery, made by the township supervisors, involving an expenditure of less than one hundred dollars (\$100), and made without a contract in writing, shall be certified to the township commissioner.

No payment for work done under a contract for the construction, reconstruction, and improvement of roads or bridges shall be made until an estimate of the work done has been made and submitted to the township commissioner of the State Highway Department for his approval or disapproval.

(Amendment of May 17, 1921, P. L. 857.)

Drafted from Sec. 8, Act of July 22, 1913, P. L. 915, and Sec. 27, Act of June 13, 1836, P. L. 551.

This clause was twice amended at the session of 1921.

The above amendment added practically all of the matter after the first paragraph.

V. To erect watering-troughs along the highway, at an expense not exceeding twenty dollars, and to keep the same in repair.

Drafted from Sec. 3, Act of April 28, 1876, P. L. 51.

For additional provisions relating to watering troughs, see appendix, chapter on roads, highways and bridges, subdivision (q), sections 1852 to 1855 inclusive.

VI. To appropriate moneys for the expenses of Memorial Day services.

Drafted from Sec. 1, Act of June 25, 1895, P. L. 298.

VII. To appropriate money or convey land, either independently or in connection with any county, city, town, borough, or township, to the Commonwealth of Pennsylvania, for the purpose of assisting the Armory Board of the Commonwealth of Pennsylvania in the erection of armories for the use of the National Guard, and to furnish water, light, or fuel, free of cost to the Commonwealth, for use in any armory of the National Guard, and to do all things necessary to accomplish the purposes of this clause.

Drafted from Sec. 1, Act of March 15, 1909, P. L. 33.

VIII. To take, by right of eminent domain, for the purpose of appropriating to themselves, for the use of the National Guard of Pennsylvania, such public lands, easements, and public property as may be in their possession or control, and used or held by them for any other purpose. Such right, however, shall not be exercised as to any street or highway or wharf, but all other public easements and property may be appropriated and used for the purposes herein provided, any limitation of the use thereof by the township, either by donation, dedication, appropriation, statute, or otherwise, to the contrary notwithstanding.

Drafted from Sec. 1, Act of June 26, 1895, P.L. 332.

IX. To subscribe for not more than three publications the main subject-matter of which pertains to good roads and road building. Such publication shall be for the joint use of the supervisors, superintendents, and roadmasters of the township.

Drafted from Sec. 1, Act of May 5, 1911, P. L. 165.

CHAPTER VIII

TAXATION, FINANCE, ROAD FUND.

ARTICLE I.

IN TOWNSHIPS OF THE FIRST CLASS.

For other provisions relating to taxation see Appendix, Chapter on Taxation, sections 1534 to 1638.

Section 390. The board of township commissioners of townships of the first class shall each year, within sixty days after the first Monday of January, estimate the several amounts of money which will be required for the several specific purposes of township government and expenses during the current fiscal year, and by ordinance appropriate, out of the revenues available for the year, the specific sums required. The tax levied by the township authorities shall be fixed at such figure, within the limit fixed by law, as, with all other sources of revenue, will meet and cover said appropriations. The total appropriation shall not exceed the revenues available for the fiscal year. The ordinance shall be open to the inspection of any taxpayer of said township, or his, her, or its authorized representatives. If the funds available from taxation and other sources shall be estimated to be in excess of the requirements of the current fiscal year, an appropriation may be made for the payment of township orders or indebtedness of the previous year.

Drafted from Sec. 1, Act of April 27, 1909, P. L. 198, which supplements the Act of April 28, 1899, P. L. 104.

The original section which provided for appropriation within sixty days after the organization of the board of township commissioners has been changed to within sixty days after the first Monday of January. This change was occasioned in view of the fact that the commissioners organized every second year only.

Section 391. No work shall be hired to be done, no materials purchased, no contracts made, and no orders issued for the payment of any moneys, by the authorities of any township of the first class, in any amount which will cause the sums appropriated to specific purposes to be exceeded; nor shall any orders be issued against any appropriated fund at a time when there shall not be sufficient funds in the treasury credited to such fund to meet such orders. No change in the purpose of the appropriations shall be made, unless by an ordinance, which shall set out in detail the reasons for and character of such change. Such ordinance shall be open to the inspection of

any taxpayer, or his, her, or its authorized representative. Nothing in this section shall prevent any such township from borrowing money and thereby increasing its indebtedness to the extent, and in the manner, in which municipal districts are now authorized to incur or increase the same, for the purpose of permanent improvements. In authorizing the issue of obligations or securities for such loans, the township commissioners shall provide that moneys subsequently derived from assessments upon parties benefited by such improvements shall be deposited in the sinking-fund for the payment of the principal and interest of said obligations. If any work shall be done for, or materials furnished to, any township of the first class contrary to the provisions of this act, the township commissioners are hereby prohibited from authorizing payment therefor as a moral obligation or otherwise.

Drafted from Sec 3, Act of April 27, 1909, P. L. 198, supplementing the Act of April 28, 1899, P. L. 104.

Section 392. No contracts, hirings, or purchases made, or orders or warrants issued, not provided for by an appropriation by the township commissioners as is required by law, or which would cause any appropriation to be exceeded, shall be valid.

Drafted from Sec. 2, Act of June 3, 1911, P. L. 626 supplementing the Act of April 28, 1899, P. L. 104.

Section 393. All contracts or purchases made by any township of the first class, involving the expenditure of over five hundred dollars, shall be in writing, and shall be made with the lowest financially responsible bidder, after notice by the secretary, published once a week for three weeks in one or more newspapers of the county circulating in the township. This section shall not apply in the case of any township of the first class repairing its public highways, except as to any purchases of materials or equipment for the purposes of such repairs.

In every instance in which any contract for any public work, construction, materials, supplies, or other matters or things, for any township of the first class in this Commonwealth, shall be awarded upon competitive bids, it shall be the duty of the authorities authorizing the same to award said contract to the lowest financially responsible bidder; and any published notice for bids shall contain full plans and specifications, or refer to the places where copies thereof can be obtained, and give the time and place of meeting of said authorities at which meeting bids shall be publicly opened and read. If, through lack of a quorum or other reason, no meeting shall be held at such time and place, notice of the same kind shall be repeated for the subsequent time and place fixed, and the foregoing pro-

visions as to bids shall apply. The same course shall be pursued until a meeting shall actually be held for receiving and opening bids. Any contract made in violation of the provisions hereof shall be void.

Drafted from Sec. 1, Act of May 23, 1913, P. L. 306, amending Sec. 4, Act of June 3, 1911, P. L. 262, which was a supplement to the Act of April 28, 1899, P. L. 104.

Section 394. No orders or indebtedness of any previous years shall be paid out of the funds of any fiscal year except as provided in the first section of this article, unless, after the close of the fiscal year, it shall be ascertained that the funds appropriated and available therefor are in excess of the amount required; in which case, such surplus may be applied to such former orders or indebtedness. Any township treasurer who shall pay the orders or indebtedness of any previous year except as herein provided shall be allowed no credit in the settlement of his accounts for any sum so paid out, nor shall he have any claim or right of action against the township therefor.

Drafted from Section 4, Act of April 27, 1909, P. L. 198.

Section 395. The board of township commissioners may borrow money and issue evidences of indebtedness therefor. The total amount of indebtedness so created shall not exceed two per centum of the county valuation of the property within the township, without the assent of the electors of the township. The rate of interest on any such indebtedness shall not exceed six per centum. No indebtedness shall be incurred or expenditure authorized except by ordinance. To authorize the expenditure of more than one hundred dollars a special resolution of the board shall be necessary.

When any township of the first class shall borrow money and issue bonds or other securities therefor, except in the case of the giving of notes for temporary loans as may be authorized by law, the commissioners shall sell the same to the highest bidder after public notice by advertisement, once a week for three weeks, in at least one newspaper of general circulation published in the county in which such township shall be situated. No bid for such bonds or securities at less than their par value shall be accepted.

(Amendment of March 17, 1921, P. L. 36).

The first clause of this section was drafted from Section 7, Clause 7, of the Act of April 28, 1899, P. L. 104. The second clause is new. The amendment of 1921 changed the limit of the rate of interest on township indebtedness from five to six per centum.

Section 396. All disbursements in discharge of township indebtedness duly incurred shall be made by the township treasurer, by virtue of warrants or orders drawn on him by the order of the board

of township commissioners, attested by the president or vice-president and secretary of the board. The board shall prescribe by ordinance the manner in which bills for township indebtedness shall be approved for payment.

Drafted from Sec. 8, Act of April 28, 1899, P. L. 104.

Section 397. The board of township commissioners may levy taxes upon all property and upon all occupations within the township made taxable for township purposes, as ascertained by the last adjusted valuation for county purposes, for the purposes and at the rates hereinafter specified, namely:

One. An annual tax for township purposes, not exceeding ten mills, unless the board of township commissioners by unanimous action shall, upon due cause shown, by resolution, petition the court of quarter sessions, in which case the court may order a rate of not more than five mills additional to be levied: Further provided, That if, at the hearing before the court of quarter sessions upon said petition, which hearing is hereby directed to be held not less than ten nor more than fifteen days after said petition shall be presented, the owners of real estate having assessed valuation of fifty per centum of the total assessed valuation of real estate in said township shall, by petition, object to the making of an order for any additional tax levy, the court shall thereupon deny the prayer of said petition.

Two. A tax for the purpose of building and maintaining a suitable place for the housing of fire apparatus.

Three. An annual tax, not exceeding one-tenth of one mill, for the purpose of caring for trees planted under the supervision of the shade-tree commission, and for the purpose of publishing notices of meetings to consider the planting, removing, or changing of trees. In lieu of the tax provided for in this clause, the township commissioners may, by specific appropriation, provide for the maintenance of such trees from the general funds of the township.

Four. An annual tax so long as necessary, not exceeding fifty per centum of the rate of assessment for township purposes, for the purpose of procuring a lot and erecting a building thereon for a town-house, and for the payment of indebtedness incurred in connection therewith: Provided, The total indebtedness for the payment of which any such tax shall be levied shall not exceed one-half of one per centum of the assessed value of real estate in the township.

This article does not include the levy of any taxes upon particular districts, or parts of any township, for particular purposes.

(Amendment of May 16, 1921, P. L. 575).

The first clause of this original section was drafted from section 7, Act of April 28, 1899, P. L. 104.

The portion of the clause following the words "ten mills" was added by the amendment.

The second clause of this original section was drafted from section 1, Act of March 18, 1909, P. L. 40.

The third clause of this original section was drafted from section 5, Act of May 31, 1907, P. L. 349.

The fourth clause of this original section was drafted from section 3, Act of June 26, 1895, P. L. 324. The clause originally provided that the tax levied was not to exceed fifty per centum of the rate of assessment for road purposes. This was changed to township purposes by the amendment, which also added the proviso that "the total indebtedness for the payment of which any such tax shall be levied shall not exceed one-half of one per centum of the assessed value of real estate in the township."

Section 398. In addition to the levies provided for in the preceding section, when it is shown to the court of quarter sessions that the debts due by any township exceed the amount which the township commissioners may collect in any year by taxation, the court after ascertaining the amount of indebtedness of any such township, may by a writ of mandamus direct the township commissioners, by special taxation, to collect an amount sufficient to pay the same. If the amount of such indebtedness is so large as to render it unadvisable to collect the same in any one year, taking into consideration other necessary taxation, the court may direct the same to be levied and collected by annual instalments, and may order such special taxes to be levied and collected during such successive years as may be required for payment of the same.

Drafted from Sec. 1, Act of March 31, 1864, P. L. 162.

Section 399. As soon as possible after the receipt of the duplicate from the county commissioners, as provided in the act of May fifth, one thousand nine hundred fifteen, entitled "An act requiring the county commissioners to furnish to townships of the first class duplicates of the adjusted valuation for taxation purposes within such townships," the board of township commissioners shall deliver a duplicate of the assessment of township taxes to the township treasurer, together with their warrant for the collection of the same.

Drafted from part of Sec. 15, Act of April 28, 1899, P. L. 104.

The clause relating to the receipt of the duplicate from the county commissioners is new and affects the time of the delivery of the assessment of taxes to the treasurer.

The provisions of the Act of May 5, 1915, P. L. 258, are found in the appendix under the subject of taxation, subdivision (e), section 1556.

Section 400. As soon as possible after the receipt of the duplicate the treasurer shall give public notice thereof by at least ten written or printed notices, to be posted in public places in the township, and

by advertisement in a newspaper published in the township, if any such there be, that the duplicate has been issued and delivered to him.

(Amendment of May 11, 1921, P. L. 482, sec. 1).

Drafted from part of Sec. 15, Act of April 28, 1899, P. L. 104, which section however, did not state what the notice should contain. The clause remedying this ambiguity was drafted from section 1, Act of May 1, 1909, P. L. 305, amending section 7, Act of June 25, 1885, P. L. 187.

The amendment of 1921 eliminated a clause concluding the original section, which provided for a discount of five per centum for the payment of tax as within sixty days from the time of notice.

Section 401. The township treasurer, within thirty days after receiving the tax duplicate, shall notify every taxable whose name appears on such duplicate. Such notice shall contain the rate of taxation, the valuation of the property of such taxable, the occupation of such taxable, and the full amount of taxes for which said taxable is liable for the current year. Such notice shall further state that such taxes are payable, designate a place and time when they shall be paid, and when an additional percentage will be added as penalty. Such notice shall be mailed to the last known post-office address of each taxable.

Any township treasurer failing to comply with the provisions of this section shall forfeit all commissions on any taxes received and collected by him from any taxable not notified.

Before any allowance is made by the township auditors for commissions due to the township treasurer for taxes collected, the treasurer shall make an affidavit setting forth that he has complied with the provisions of this section.

(Amendment of May 11, 1921, P. L. 482, sec. 2).

Drafted from sections 1, 3 and 4, Act of May 20, 1913, P. L. 248.

The amendment of 1921 eliminated from the notice the statement as to the time within which an abatement would be allowed, and when the full amount of tax would be collected as required by the original section of the code.

Section 402. All persons who fail to make payment of any tax charged against them in the duplicate within the period of sixty days from the date of publication of notice thereof by the township treasurer, as provided in section four hundred and one, shall be charged with a penalty of two per centum additional on the amount of tax and thereafter an additional penalty of one per centum for each month, or fractional part thereof, during the time such tax shall

remain unpaid, which penalties shall be added to the tax by the treasurer, and collected by him or his deputy.

(Amendment of May 11, 1921, P. L. 482, sec. 3).

Drafted from Sec. 1, Act of June 4, 1901, P. L. 361.

The amendment of 1921 changed the penalty from five per centum to two per centum, and added the clause "and thereafter an additional penalty of one per centum for each month or fractional part thereof, during the time such tax shall remain unpaid."

Section 403. At the expiration of three months from the time of receiving the duplicate, the treasurer shall proceed to collect all unpaid taxes from the taxpayers, and to that end may appoint one or more deputy collectors. The treasurer and his deputies shall have and exercise all powers conferred by existing laws on collectors of county and township taxes.

Drafted from Sec. 16, Act of April 28, 1899, P. L. 104.

Section 404. The township treasurer may retain, out of the taxes collected, such actual printing and postage expenses as shall be incurred in performing the duties prescribed in this article. Such amounts shall be adjusted by the township auditors at the time of auditing the treasurer's accounts.

Drafted from Sec. 2, Act of May 20, 1913, P. L. 248.

Section 405. The township commissioners shall at all times make abatements or exonerations for mistakes, indigent persons, unseated lands, et cetera, as to them shall appear just and reasonable. The township secretary shall enter in a book or books, to be kept for that purpose, the names of all persons abated or exonerated, together with the reason why, the amount of the tax, and date when made, and give to the treasurer a certificate stating the nature of the tax and the amount exonerated.

Drafted from part of Sec. 48, Act of April 15, 1834, P. L. 409.

Section 406. The accounts of collectors of taxes shall be settled by the township auditors. The treasurer shall state a separate account for each different tax collected by him.

Drafted from part of Sec. 11, Act of June 25, 1885, P. L. 187, which section also provided that collectors of State and county taxes shall settle with the county commissioners as heretofore. The collection of county taxes not being a township matter, this clause was eliminated from the section as drafted.

CHAPTER VIII

TAXATION, FINANCE, ROAD FUND.

ARTICLE II.

IN TOWNSHIPS OF THE SECOND CLASS.

For other provisions relating to taxation see appendix, chapter on taxation, sections 1534 to 1638 inclusive.

Section 420. The board of township supervisors of townships of the second class shall annually, before their organization meeting in December or as soon thereafter as practicable, make a written estimate of the amount of money required for the ensuing year, beginning on the first Monday of December, which shall be filed with the treasurer. Such estimates, for the purpose of aiding the board in determining how much road tax to levy, shall specify—

(a) The amount of money necessary for the maintenance, repair, and improvement of highways, including sluices.

(b) The amount of money necessary for the repair and construction of culverts and bridges.

(c) The amount of money necessary for the purchase, hire, repair, and custody of tools, implements, and machinery.

(d) The amount of money necessary for the payment of debts, or other miscellaneous purpose.

Drafted from Sec. 11, Act of July 22, 1913, P. L. 915.

Section 421. The board of township supervisors may levy taxes upon all property and upon all occupations within the township made taxable for township purposes, as ascertained by the last adjusted valuation for county purposes, for the purposes and at the rates hereinafter specified, namely:

One. An annual road tax, not later than the fourth Monday of March of each year, not exceeding ten mills, unless the board of supervisors by unanimous action shall, upon due cause shown, petition the court of quarter sessions, in which case the court may order a greater rate than ten mills, but not exceeding ten additional mills, to be levied. All road taxes shall be collected in cash.

Two. A tax for the purpose of building and maintaining a lock-up, after obtaining the assent of the electors of the township in the manner provided in section twelve hundred and fifty of this act.

Three. Upon the receipt of a petition of a majority of the owners of real estate of the township requesting it, an annual tax, not ex-

ceeding five mills, for the purpose of lighting the streets and highways in the manner provided in section three hundred and eighty-six, clause one of this act, and, of defraying the cost, charges, and expenses thereof.

Four. An annual tax so long as necessary, not exceeding fifty per centum of the rate of assessment for road purposes, for the purpose of procuring a lot and erecting a building thereon for a townhouse, and for the payment of indebtedness incurred in connection therewith: Provided, The total indebtedness for the payment of which any such tax shall be levied shall not exceed one-half of one per centum of the assessed value of real estate in the township.

The taxes authorized to be levied by this section shall be levied upon the last adjusted valuation for county purposes, which valuation shall be furnished to the township supervisors by the county commissioners. If any further adjustment of valuation is made by the county commissioners, after any tax is so levied, and before said tax is payable, such adjusted valuation shall be certified to the township supervisors and to the township collector of taxes by the commissioners and the tax shall be collected on the basis of such adjusted valuation.

This article does not include the levy of any taxes upon particular districts, or parts of any township, for particular purposes.

(Amendment of May 16, 1921, P. L. 575, Sec. 2)

This section was twice amended at the session of 1921. This amendment added the proviso to the fourth clause.

The first paragraph of the section was drafted from Sec. 1, Act of June 11, 1915, P. L. 947, amending Sec. 5, Act of July 22, 1913, P. L. 915; and from Sec. 27, Act of April 15, 1834, P. L. 509.

Clause one was drafted from part of Sec. 1, Act of June 11, 1915, P. L. 947, amending Act of July 22, 1913, P. L. 915.

Clause two was drafted from Act of May 11, 1901, P. L. 169.

Clause three was drafted from Act of April 23, 1909, P. L. 168.

Clause four was drafted from Sec. 3, Act of July 26, 1895, P. L. 324.

Paragraph six was drafted from part of Sec. 1, Act of June 11, 1915, P. L. 947, amending Sec. 5, Act of July 22, 1913, P. L. 915; and from Sec. 27, Act of April 15, 1834, P. L. 509.

The last paragraph of the section is new and was inserted to call attention to the fact that the levies provided by this section are not exclusive. Other parts of the code provide for levies for particular purposes in particular districts.

Section 421. The board of township supervisors may levy taxes upon all property and upon all occupations within the township, made taxable for township purposes, as ascertained by the last

adjusted valuation for county purposes, for the purposes and at the rates hereinafter specified, to wit:

I. An annual road tax, not later than the fourth Monday of March of each year, not exceeding ten mills, unless the board of supervisors by unanimous action shall, upon due cause shown, petition the court of quarter sessions, in which case the court may order a greater rate than ten mills, but not exceeding ten additional mills, to be levied. All road taxes shall be collected in cash.

II. A tax for the purpose of building and maintaining a lock-up, after obtaining the assent of the electors of the township in the manner provided in section twelve hundred and fifty of this act.

III. Upon the receipt of a petition of a majority of the owners of real estate of the township requesting it, an annual tax, not exceeding five mills, for the purpose of lighting the streets and highways, in the manner provided in section three hundred and eighty-six, clause one, of this act, and of defraying the cost, charges, and expenses thereof.

IV. An annual tax so long as necessary, not exceeding fifty per centum of the rate of assessment for road purposes, for the purposes of procuring a lot and erecting a building thereon for a townhouse, and for the payment of indebtedness incurred in connection therewith.

V. A tax for the purpose of purchasing and maintaining fire apparatus and to provide a suitable place for the housing of the same; but no appropriation to any one or more fire companies from such taxes shall, for the first appropriation, exceed five thousand dollars for the purchase of equipment, nor shall any appropriation in any year for the purpose of maintenance of any one or more fire companies exceed one thousand dollars.

The taxes authorized to be levied by this section shall be levied upon the last adjusted valuation for county purposes, which valuation shall be furnished to the township supervisors by the county commissioners. If any further adjustment of valuation is made by the county commissioners, after any tax is so levied and before said tax is payable, such adjusted valuation shall be certified to the township supervisors and to the township collector of taxes by the commissioners, and the tax shall be collected on the basis of such adjusted valuation.

This article does not include the levy of any taxes upon particular districts, or parts of any township, for particular purposes.

(Amendment of May 20, 1921, P. L. 959, Sec. 1).

This amendment added clause V to this section.

See notes to this section immediately preceding.

Section 422. In addition to the levies provided for in the preceding section, when it is shown to the court of quarter sessions that the debts due by any township exceed the amount which the supervisors may collect in any year by taxation, the court, after ascertaining the amount of indebtedness of any such township, may by a writ of mandamus direct the township supervisors, by special taxation, to collect an amount sufficient to pay the same. If the amount of such indebtedness is so large as to render it unadvisable to collect the same in any one year, taking into consideration other necessary taxation, the court may direct the same to be levied and collected by annual instalments, and may order such special taxes to be levied and collected during such successive years as may be required for payment of the same.

Drafted from Act of March 31, 1864, P. L. 162.

Section 423. The township supervisors shall make or cause a duplicate to be made designating the amount of road tax levied against each taxpayer of the township, and also duplicates for all other taxes levied and assessed under the provisions of this article, and shall deliver the same to the township collector, together with a warrant for the collection of the same, which taxes shall be collected as follows; namely, — To all taxpayers who pay their taxes to the collector before June first of each year, an abatement of five per centum shall be made. All road taxes paid to the collector between June first and October first of each year shall be paid in full; and to all road taxes remaining unpaid on the first of October, in each year, the collector shall add five per centum as penalty for such delinquency, and shall collect said penalty in addition to the tax levied, said penalty to be his compensation for collecting said delinquent taxes.

Drafted from the first paragraph of Sec. 14, Act of July 22, 1913, P. L. 915. The clause requiring the tax collector to give notice, and the clause providing for the commission for collection of taxes other than delinquent taxes have been omitted, but are provided for in other sections of the code. See Sec. 427.

Section 424. Where any duplicate of taxes assessed is issued and delivered to the collector of taxes he shall give public notice, as soon thereafter as conveniently can be done, by at least ten written or printed notices, to be posted in as many public places in different parts of the township. Such notice shall state that the duplicate has been issued and delivered to him.

Drafted from part of Sec. 1, Act of May 1, 1909, P. L. 305, amending Sec. 7, Act of June 25, 1885, P. L. 187.

Section 425. Each tax collector of the several townships of this Commonwealth, within thirty days after receiving the tax duplicate, shall notify every taxable whose name shall appear on such duplicate. Such notice shall contain the rate of taxation, the valuation of the property of such taxable, the occupation of such taxable, and the full amount of taxes for which said taxable shall be liable for the current year. Such notice shall further state that such taxes are payable, shall designate a place and time when they shall be paid; and shall further state the time within which an abatement of tax will be allowed, when full amount of tax will be collected, and when an additional percentage will be added as a penalty. Such notice shall be mailed to the last known post-office address of each of said taxables.

Before any allowance is made by the boards of supervisors for commissions due the collector of taxes, he shall make an affidavit setting forth that he has complied with the provisions of this section.

Drafted from Secs. 1 and 3, Act of May 5, 1911, P. L. 170.

Section 426. The collector of taxes shall collect the taxes charged in said duplicates and pay over the same to the treasurer or authorities entitled thereto, after deducting his commission for the collection thereof. All taxes collected before the first day of June shall be paid over within fifteen days thereafter by the collector. All taxes thereafter collected during his term of office shall be paid over at regular intervals of one month. A complete settlement of all taxes collected shall be made by the collector of taxes with the treasurer, not later than three months after the expiration of his term of office.

Drafted from Sec. 1, Act of May 21, 1913, P. L. 284, amending Sec. 9, Act of June 25, 1885, P. L. 187, omitting, however, that part which fixes the compensation of the collector which is provided for in other sections of this code. (See sections 423 and 427)

Section 427. The compensation of the tax collector shall be two per centum on all general road taxes collected prior to the first day of June of each year, and five per centum on all such taxes collected between the first day of June and the first of October. For the collection of road taxes collected after the first day of October the collector shall receive the penalty added to such taxes, as provided in section four hundred and twenty-three of this act. For the collection of special road taxes and all township taxes other than general road taxes his compensation shall be five per centum of the amount collected.

Drafted from part of Sec. 14, Act of July 22, 1913, P. L. 915, and Sec. 4, Act of June 25, 1885, P. L. 187.

Section 428. The tax collector shall keep correct accounts of all moneys collected, marking "paid" on his duplicate each taxable, with the amount of tax and the date on which paid. The collector shall, on the first day of each month, make a true statement in writing, to the secretary of the board of supervisors, of all taxes collected during the previous month, giving names of taxables, and amount collected from each, and the total amount received. The collector shall pay over on the first day of each month, to the treasurer, all moneys collected during the previous month, and take his receipt for same. Any tax collector who neglects or refuses to comply with the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than one hundred dollars, or to be imprisoned for a term not exceeding one year, or both.

Drafted from the second paragraph of Sec. 14, Act of July 22, 1913, P. L. 915.

Section 429. The tax collector may retain, out of the taxes collected by them, such actual printing and postage expenses as shall be incurred by him in performing his duties. Such amount shall be adjusted by the boards of supervisors.

Drafted from Sec. 2, Act of May 5, 1911, P. L. 170.

Section 430. The supervisors shall at all times make abatements or exonerations for mistakes, indigent persons, unseated lands, et cetera, as to them shall appear just and reasonable. The township secretary shall enter in a book or books, to be kept for that purpose, the names of all persons abated or exonerated, together with the reason why, the amount of the tax, and date when made, and give to the collector a certificate, directed to the treasurer, stating the nature of the tax and the amount exonerated, in order to make settlement accordingly.

Drafted from Sec. 48, Act of April 15, 1834, P. L. 509.

Section 431. The accounts of the collector of taxes shall be settled by the township auditors. The tax collector shall state a separate account for each different tax collected by him.

Drafted from part of Sec. 11, Act of June 25, 1885, P. L. 187, which section also provided that collectors of State and county taxes should settle with the county commissioners as heretofore. The collection of county taxes not being a township matter, this clause was eliminated from the section as drafted.

Section 432. That the Commonwealth offers rewards, as hereinafter provided, for the construction and improvement of township roads and the erection and construction of township bridges in townships of the second class.

All moneys appropriated by the General Assembly from time to time for the payment of rewards to townships of the second class for the constuction and improvement of roads and the erection and construction of bridges, as in this act provided for, shall be apportioned by the State Highway Department among the several counties of this Commonwealth in proportion to the number of miles of township road located in townships of the second class.

Of the amount apportioned to the several counties for road and bridge improvements in townships of the second class under the provisions of this act, not more than fifteen per centum of such appropriation shall be available in any one township in any such county. In case any excess in the amount set aside for use in the county remains after all applications from the several townships in the county have been considered, the township commissioner of the State Highway Department shall apportion the excess amount among the townships that have applications on file for State reward for more than fifteen per centum. Should there be not enough applications from all the townships in a county to exhaust the apportionment of the State reward fund made to a county, then such excess shall be apportioned to the counties where the application of the townships call for the expenditure of a sum greater than the amount originally apportioned to said county.

Applications for rewards for the construction and improvement of township roads, and for the erection and construction of township bridges, shall be made by the township supervisors of townships of the second class, on or before May first, one thousand nine hundred and twenty-two, and annually thereafter, to the State Highway Department, on blanks furnished by the Department, which applications shall be considered by the department in their order of filing. Applications not granted by reason of a lack of funds shall be given first consideration in the following year or years.

(Amendment of May 16, 1921, P. L. 564, Sec. 5).

This section was also amended by the Act of July 15, 1919, P. L. 969, which amendment is superseded by the above amendment.

Sections 432 to 438 of the original code provided a system of aid for the improvement of township roads. The State was pledged to contribute an amount equal to one-half of the township road taxes, but not in excess of \$20 per mile. The amendment of July 15, 1919, changed this system to one of rewards for permanent road and bridge improvements. The amendment of May 16, 1921, lessened the mileage required in the case of permanent improvements and increased the amount contributed by the State.

Section 433. Before any roads are constructed or improved or bridges are erected or constructed under the provisions of this act, the supervisors of the township of the second class asking for a reward shall furnish to the township commissioner of the State Highway Department a copy of the plans and specifications of the

proposed improvement, together with estimates of the cost of such improvement, unless such plans and estimates have been made by said department. No reward shall be paid under the provisions of this act to any township until the Commonwealth has approved the plans and specifications as filed in the department. When such plans and specifications have been approved, the township commissioner shall certify to the township supervisors the proportion of the cost of such improvement which the Commonwealth agrees to pay. The proportion agreed upon to be paid by the Commonwealth shall not exceed the amount per mile as hereinafter provided in this act, and where the cost of the improvement is less than that set forth in the estimate or contract, a proper deduction shall be made by the Commonwealth for such decrease in cost.

(Amendment of July 15, 1919, P. L. 969).

The section as amended is new. See notes to section 432.

Section 434. Reward shall be granted by the Commonwealth for improvements only of the character herein set forth, namely:

(a) For grading and draining a section of a road not less than one-fourth mile in length; (b) for graveling or cindering a graded and drained road not less than one-fourth mile in length; (c) for constructing a road with broken stone base, and broken stone, slag, gravel, cinders or other approved material top, not less than one-fourth mile in length; (d) for macadamizing a road or for constructing a Telford macadam road of not less than one-fourth mile in length; (e) for constructing a concrete, brick, or bituminous surfaced road of not less than one-fourth mile in length; (f) for the erection and construction of bridges of three feet or more span, constructed of concrete or stone or a combination of concrete and stone, or a steel bridge with a floor constructed of a material approved by the State Highway Department; (g) for the purchase and installation of culvert and drain-pipes.

Whenever any improvements of the character mentioned in this section have been completed by any township of the second class, the State will pay as a reward the following sums, namely: One.—For roads of the character set forth in subdivision (a), fifty per centum of the cost of making such improvement, not to exceed six hundred dollars per mile; Two.—For roads of the character set forth in subdivision (b), fifty per centum of the cost of making such improvement, not to exceed one thousand five hundred dollars per mile; Three.—For roads of the character set forth in subdivision (c), fifty per centum of the cost of making such improvement, not to exceed three thousand dollars per mile; Four. — For roads of the character set forth in subdivision (d), fifty per centum of the cost

of making such improvement, not to exceed four thousand dollars per mile; Five. — For roads of the character set forth in subdivision (e), fifty per centum of the cost of making such improvement, not to exceed six thousand dollars per mile; Six. — For bridges constructed under subdivision (f), fifty per centum of the contract price and not in any case to exceed fifty per centum of the actual cost of said bridge when constructed by the supervisors; Seven.—For the purchase and installation of culvert and drain-pipes under subdivision (g), fifty per centum of the purchase price of said culvert or drain-pipes when the said pipes have been placed, but no payment shall be made under this provision for culverts and drain-pipes installed in grading and draining a section of road for which payments are made under clause one.

The aforesaid rewards shall be based upon roads the improvement of which shall be of a width of not less than sixteen feet, and corresponding reduction or addition in the amount of reward shall be made as the width of the improved road is reduced or increased, but no reward shall be paid for the improvement of any road of less width than twelve feet.

(Amendment of May 16, 1921, P. L. 564, Sec. 6.)

This section was also amended by the Act of July 15, 1919, P. L. 969, which was superseded by this amendment. The section as amended is new. See notes to section 432.

Section 435. All improvements made in accordance with the provisions of this act may be made by the township supervisors of such township by contract, to be let by the township supervisors to the lowest and best bidder after three weeks publication in at least two newspapers published in the county in which such township is located, or such improvements may be made partly by the township and partly by contract, to be let only after advertisement as hereinbefore provided. All the work of making said improvement may be done by the township.

Upon completion of the work for which a State reward has been granted, according to the plans and specifications and contract or agreement, verified by the sworn statement of a majority of the board of township supervisors and such other evidence as the township commissioner may require, said township commissioner, with the approval of the State Highway Commissioner, shall certify to the Auditor General the amount of State reward due said township, and he shall draw a warrent upon the State Treasurer, as provided by act of Assembly, to the treasurer of the board of supervisors, which shall be paid out of money appropriated for the purpose.

(Amendment of July 15, 1919, P. L. 969).

This section as amended is new. See notes to section 432.

Section 436. Whenever the township highway funds have been exhausted, the board of supervisors may issue a certificate of indebtedness, and borrow on the credit of the township money in anticipation of taxes to be collected, to the end that work may be performed in proper season and in accordance with rules and regulations prescribed.

(Amendment of July 15, 1919, P. L. 969).

Drafted from part of Section 1, Act of June 11, 1915, P. L. 947, amending Section 5, Act of July 22, 1913, P. L. 915. See notes to Section 432.

Section 437. Upon the neglect or refusal of the supervisors of any township to carry out the instructions, rules, and regulations of the township commissioner of the State Highway Department, then the township commissioner of the State Highway Department may withhold from such township the amount to which it would otherwise be entitled for the year in which said neglect or refusal occurred.

(Amendment of July 15, 1919, P. L. 969).

This section as amended was drafted from the latter part of the Act of June 11, 1915, P. L. 947, amending Section 5, Act of July 22, 1913, P. L. 915. See notes to Section 432.

Section 438. (This section was amended by Act of July 15, 1919, P. L. 969, and the same section as amended was repealed by Act of May 16, 1921, P. L. 564.)

Section 439. The fiscal year in townships of the second class shall expire on the day before the first Monday in December in each year. All receipts, disbursements, contracts, or purchases subsequent to that date shall be chargeable to and entered as of record in the fiscal year following.

Drafted from Sec. 12, Act of July 22, 1913, P. L. 915.

CHAPTER IX.

EMINENT DOMAIN.

ARTICLE I.

Section 460. In all cases where the right of eminent domain is conferred by the provisions of this act, townships of the first and second class may enter upon the lands and premises of any person.

A new section, declaratory of the existing law.

Section 461. In all proceedings for the condemnation and appropriation of land and property by the right of eminent domain the petition for the appointment of viewers shall contain allegations specifying any judgements, mortgages, or other claims (hereinafter designated "liens") which are liens upon the land and property sought to be appropriated or condemned.

Drafted from Sec. 1, Act of June 11, 1915, P. L. 942, amending Sec. 1, Act of April 14, 1915, P. L. 122.

Section 462. A notice, in such form as the court shall direct, stating a time and place for a hearing to determine the number, amount, and priority of such liens, and the parties entitled thereto, shall be served on the owner of the property and on each of the owners of the liens, at least ten days before the day fixed for such hearing.

This section is new. It was drafted with the object of avoiding the possibility of discharging liens of record without notice to owners.

Section 463. Testimony shall be taken in such proceedings to ascertain the amounts of such liens and the dates of the entry of the same. The amounts of the liens and the dates of entry thereof shall be found as facts by the viewers. Certified lists of liens from the courts of the Commonwealth and of the United States shall be prima facie evidence of the existence, dates, amounts, dates of entry, and places of record of said liens, and unless modified or overcome by oral or documentary evidence shall be conclusive upon the parties thereto as to items specified.

Drafted from Sec. 2, Act of April 14, 1915, P. L. 122.

Section 464. When it appears that liens exist upon property sought to be condemned and appropriated, a report of the facts found shall be made to the court. Such report shall be subject to exceptions, as regulated by the Supreme Court by general rule. When the court has finally determined the findings in relation to the liens, the court shall make an order directing the payment and distribution of the

amount found to be payable as compensation to the parties entitled thereto: First, to the owners of the liens; then, to the owners of the property appropriated. The parties interested shall have the right of appeal from such order of distribution to the Superior or Supreme courts. Payment in accordance with the order of distribution, evidenced by a receipt of record in the proceedings, shall absolutely discharge the party making the payment from all liens by any person, copartnership, association, or corporation as against said property. In such receipt and on the record thereof any claimant may reserve the right to proceed against any other property or assets of the owner of the property condemned, for any balance due upon his lien.

Drafted from Sec. 2, Act of June 11, 1915, P. L. 942, amending Sec. 3, Act of April 14, 1915, P. L. 122.

Section 465. Upon payment of the compensation for land or property, in accordance with the order of distribution, title to such land or property shall vest in the township in accordance with provisions of the law under which the appropriation is made, and all claims for compensation shall be thereby paid and satisfied.

Drafted from Sec. 3, Act of June 11, 1915, P. L. 942, amending Sec. 4, Act of April 14, 1915, P. L. 122.

Section 466. In eminent domain proceedings all witnesses called may, when duly qualified, state their opinion as to the market value of the property before the exercise of the right of eminent domain and as unaffected by it, and its market value immediately after the exercise of such right. Such witnesses may also—

(a) State in detail and costs all the elements of benefit or damage which they have taken into consideration in arriving at their opinion.

(b) In arriving at their opinion as to the market value immediately after the exercise of the right of eminent domain, add to their opinion of the market value before such exercise the value of all the elements of benefit or advantage, and deduct therefrom all disadvantage or damage.

(c) In all proceedings to assess damages or benefits for the opening of any street, alley, or highway, take into consideration as one of the elements of advantage or disadvantage the cost of the improvements.

Drafted from Sec. 1, Act of April 21, 1915, P. L. 159.

Section 467. In all claims for damages against a township, arising from the exercise of the right of eminent domain, the party claiming damages may offer in evidence the value of the property affected as assessed for taxation.

In all cases of the appropriation of land for public use other than for roads, streets, or highways, it shall be unlawful to assess the whole or any portion of the damage done to, or value of the land so appropriated against, other property adjoining or in the vicinity of the land so appropriated.

The first paragraph of this section was drafted from Sec. 2, Act of April 21, 1915, P. L. 159. The second paragraph is new.

Section 468 Viewers or juries of view appointed by any court to assess damages and benefits due to the taking, injury, or destruction of private property, in and by the construction or enlargement of any public work, highway, or improvement, shall make their reports within a time which the court shall fix when appointing them. If any of the viewers or juries of view so appointed shall, for any reason appearing sufficient to the court, be unable to file their report within the period so fixed, the said court may, either before or after the expiration of the time fixed, extend the time for the filing of such report.

Drafted from Sec. 1, Act of March 18, 1903, P. L. 28.

Section 469. Whenever any report of viewers or juries of view, appointed by any court of quarter sessions to assess damages and benefits for the opening, widening, narrowing, or vacating of any road, street, or highway, or the taking of private property in the construction or enlargement of any public work or improvement, is filed, it shall, unless otherwise provided, be confirmed by the court at the expiration of thirty days from the date of its filing, unless exceptions thereto are filed within such time.

The party or parties to whom an award has been made, and from whose award no appeal has been taken may take such further legal proceedings as may be necessary to enforce payment of the confirmed award, either by writ of mandamus, execution, or otherwise.

Drafted from Secs. 1 and 2, Act of March 27, 1903, P. L. 83.

See also the Act of May 10, 1921, P. L. 428, *infra*, section 1743.

Section 470. In all cases of damages assessed against any township of the first or second class for property taken, injured, or destroyed by the construction or enlargement of its works, highways, or improvements, whether such assessment shall have been made by viewers, or otherwise than upon trial in court, and an appeal is not provided for, an appeal demanding a jury trial may be taken by either party to the court of common pleas of the county, within thirty days from the filing of the report.

Any such appeal shall be signed by the party taking the same, or by his agent or attorney, and shall be accompanied by an affidavit of the party appellant, or of the agent or attorney, that the same is not for the purpose of delay, but because the affiant firmly believes that injustice has been done.

When no appeal is taken in accordance with the provisions of this section and judgment is entered, and the party to whom damages have been awarded refuses to accept payment of such award or judgment, then it shall be lawful for such township, upon petition to the court, after notice as ordered by court, to pay the amount of the award and costs into the court. The court, upon such payment, shall order the satisfaction of the award or judgment.

Drafted from Secs. 1 and 2, Act of June 13, 1874, P. L. 283, and Sec. 1, Act of June 2, 1891, P. L. 72.

Section 471. When any township has tendered a bond in sufficient sum to secure the owner or lessee for damages, and the same has been accepted, or if the acceptance of such bond has been refused, and it has been filed in and approved by the court, such township shall have the right to immediate possession of the land or property appropriated. If the owner, lessee, or occupier refuses to remove his personal property therefrom, or to give up possession thereof, the township may serve written notice on such owner, lessee, or his agent or the occupier, to remove his personal property therefrom and give up possession of the land or property within sixty days from the date of the service of such notice.

Drafted from Sec. 1, Act of June 7, 1907, P. L. 461, but made to apply to townships only.

Section 472. If the owner, lessee, or occupier of said land or property appropriated, refuses or neglects to remove his personal property therefrom and give possession thereof, upon proof of the service of the notice specified in the preceding section of this act, in the office of the prothonotary, a writ of habere facias possessionem shall forthwith issue, directing the sheriff to give to the party entitled thereto full and peaceable possession.

Drafted from Sec. 2, Act of June 7, 1907, P. L. 461.

CHAPTER X.

DAMAGES FOR INJURY TO PROPERTY.

ARTICLE I.

Section 485. The right to damages against townships of the first class is given to all owners or tenants of lands, property, or material abutting on, or through which pass, roads, streets, lanes, or alleys, injured by the laying out, opening, widening, vacating, extending, or grading of such roads, streets, lanes, or alleys, or the changing of the grades or lines thereof, by such townships; the construction and the vacation by such townships of bridges and piers, abutments and approaches therefor, and the construction by such townships of sewers over, upon or through such lands or property.

Drafted from Sec. 1, Act of May 28, 1913, P. L. 368, but made applicable only to first class townships. It was held in *Road in Fulton Township*, 23 D. R. 678, that the provisions of Sec. 8, Act of June 13, 1836, P. L. 551, and Act of May 14, 1874, P. L. 164, were not inconsistent with the act of May 28, 1913, and were not repealed by it.

Section 486. All juries of view, appointed for assessing damages or benefits for taking, using, occupying or injuring land, property, or material, are directed to assess such damages against townships, and the benefits in connection therewith, and make a report thereof to the court as under existing laws.

Drafted from Sec. 2, Act of May 28, 1913, P. L. 368.

Petitions for appointment of viewers to assess damages must contain full information for the court as to the proceedings prior thereto, and under what authority the public work resulting in the damage complained of was performed. *In re Appointment of viewers*, 21 Luz. 201.

Section 487. The right of appeal to the court of common pleas, the right of trial by jury, and the right to file exceptions, are given to any party, not satisfied with such report, whose property has been taken, injured, or destroyed; or where property has been assessed to pay damages for property taken, injured, or destroyed. The right to file exceptions is given to any other interested party, including taxpayers.

Drafted from Sec. 3, Act of May 28, 1913, P. L. 368.

Section 488. After disposal of exceptions, or after verdict and final judgment, any interested party may appeal to the Superior or Supreme Court, as in other cases.

Drafted from Sec. 4, Act of May 28, 1913, P. L. 368.

CHAPTER XI.

ROADS, STREETS, AND HIGHWAYS.

ARTICLE I.

IN TOWNSHIPS OF THE FIRST CLASS.

(a) Laying Out, Opening, Widening, Straightening, Vacating, and Relaying Roads, Et Cetera.

Section 495. The board of township commissioners in townships of the first class may enact, ordain, survey, lay out, widen, straighten, vacate, and relay all roads, streets, lanes, and alleys and parts thereof within the township, upon the petition of a majority in interest of the owners of property, through whose lands any such road, street, lane, or alley passes, or upon whose land it abuts, if in the judgement of the board of commissioners it is necessary for the public convenience.

Drafted from part of Sec. 1, Act of June 7, 1901, P. L. 510.

The Board of Commissioners had no authority under Act of June 7, 1901, P. L. 510, to vacate a road lying partly within and partly without the township. *St. David's Church v. Layen, Appellant, 244 Pa. 306.*

Section 496. No such road, street, lane, or alley shall be laid out and opened through any burial-ground, or cemetery, nor through any grounds occupied by a building used as a place for public worship, or as a public or parochial school, or educational or charitable institution or seminary.

Drafted from Sec. 1, Act of April 5, 1849, P. L. 397.

Section 497. The board of commissioners shall give ten days' notice to the property owners affected thereby of the time and place when and where all parties interested may meet and be heard. Witnesses may be summoned and examined by the board and by the parties interested, at such meeting or any adjournment thereof.

Drafted from part of Sec. 1, Act of June 7, 1901, P. L. 510.

Section 498. After such hearing and a consideration of the matter, should the board of commissioners, or a majority thereof, decide in favor of granting the prayer of the petition, they shall make written report, together with a draft or survey of the road, street, lane, or alley, fixing the width thereof, and noting the improvements along the line thereof and the names of the owners of property through which the same shall pass or whereon it shall abut. Such report and

draft shall be filed in the office of the clerk of the court of quarter sessions.

Drafted from part of Sec. 1, Act of June 7, 1901, P. L. 510.

Section 499. Any citizen or freeholder of the township may, within thirty days after the filing of the report of the board of commissioners, upon entering in the court sufficient surety to indemnify the board for all costs incurred in the proceedings, file exceptions to the report, together with a petition for a review.

Drafted from part of Sec. 1, Act of June 7, 1901, P. L. 510.

Section 500. Upon favorable action on such petition by the board of commissioners, and after the expiration of the term allowed for filing exceptions, or upon the order of the court in case the compensation for the damages or benefits accruing therefrom have not been agreed upon, the court of quarter sessions, or any law judge thereof in vacation, on application by petition by the board of commissioners or any person interested, shall appoint three viewers from the county board of viewers, and shall appoint a time, not less than twenty nor more than thirty days thereafter, when said viewers shall meet upon the line of the improvement and view the same and the premises affected thereby.

Drafted from part of Sec. 2, Act of June 7, 1901, P. L. 510.

The provision that the viewers shall be appointed from the county board of viewers is new.

Section 501. The viewers shall give at least ten days' notice of the time of their first meeting, by publication in one or more newspapers of the county circulating in the township and by handbills posted upon the premises, or otherwise, as the court shall direct having regard to the circumstances of the case.

Drafted from part of Sec. 2, Act of June 7, 1901, P. L. 510.

Section 502. The viewers having been sworn or affirmed faithfully, justly, and impartially to decide and true report to make concerning all matters and things to be submitted to them and in relation to which they are authorized to inquire, and having viewed the premises and examined the property, shall hear all parties interested and their witnesses. They shall estimate and determine the damages for property taken or injured, and to whom the same are payable.

Drafted from part of Sec. 3, Act of June 7, 1901, P. L. 510.

Section 503. In all cases of assessment of damages for the opening or widening of any street or highway, the award of damages, if any, shall include all damages due to the grade at which said street

or highway is to be opened or widened, and the plan attached to the report of the viewers awarding the damages shall have therein a profile plan showing the existing grade as well as the grade to which said street is to be opened and widened.

Drafted from Sec. 1, Act of June 15, 1915, P. L. 985, but made to apply only to first class townships.

Section 504. Whenever viewers are appointed to vacate any road, street, or highway, and the vacation of the same takes no land from the owner abutting thereon, if, in the opinion of the viewers, such vacation damages the property of the abutting owner, they may award damages to such owner as though land had been actually taken.

Drafted from Sec. 1, Act of June 27, 1913, P. L. 633.

Section 505. Having estimated and determined the damages, together with the benefits as hereinafter mentioned, the viewers shall prepare a schedule thereof, and give notice to all parties to whom damages are allowed, or upon whom assessments for benefits are made, of a time, not less than ten days thereafter, and of a place, where said viewers will meet and exhibit said schedules and hear all exceptions thereto and evidence. Notice of the time and place of such meeting shall be given by personal service upon all parties allowed damages or assessed benefits, as shown upon the schedule, if resident in the township, and to all others by publication in newspapers as provided in section five hundred and one of this act.

Drafted from part of Sec. 3, Act of June 7, 1901 P. L. 510.

Section 506. After making whatever changes are deemed necessary, the viewers shall make report to the court, showing the damages and benefits allowed and assessed in each case, and shall file therewith a plan showing the improvements, the properties taken or injured, and the properties benefited thereby. When the report is filed notice thereof shall be given by publication once in the newspaper or newspapers publishing the notice provided for in section five hundred and one of this act. The notice shall state the date of filing of the report, and shall contain a schedule of the damages and benefits as shown therein. It shall further state that, unless exceptions thereto be filed or an appeal for a trial by jury be taken within thirty days from the date of filing the report, it will be confirmed absolutely.

Drafted from part of Sec. 3, Act of June 7, 1901, P. L. 510.

Section 507. The payment of damages may be imposed in whole or in part on the township, or in whole or in part by assessments upon the property benefited by such improvements, as the viewers may

determine and the court approve. In the latter case, the viewers appointed to assess damages, having first estimated and determined the same apart from benefits, shall also assess the damages, or so much thereof as they may deem just and reasonable, upon the properties peculiarly benefited by the improvement, according to benefits received in each particular case, including in the assessment all properties that will be benefited thereby, and shall report the same to the court. The total assessments for benefits shall not exceed the total damages awarded or agreed upon.

Drafted from Sec. 4, Act of June 7, 1901, P. L. 510.

Section 508. Upon the report of the viewers, or any two of them, being filed in the court, any party may, within thirty days thereafter, file exceptions thereto. The court may confirm the report or modify, change or otherwise correct the same, or change the assessments made therein, or refer the report back to the same or to new viewers, with like power as to their report. Within thirty days from the filing of any report in court, any party whose property is taken or injured may appeal and demand a trial by jury. Any party interested in any assessment of damages or benefits may, within six months after a final decree or final judgment, have an appeal to the Superior or Supreme Court. The court of quarter sessions may order what notice shall be given in connection with any part of said proceedings, and may make all orders it deems requisite.

Drafted from Sec. 5, Act of June 7, 1901, P. L. 510. See also Act of May 10, 1921, P. L. 428, Sec. 1743.

Section 509. After the passage or approval of any ordinance by the board of commissioners, for the opening, widening, straightening, extending, or vacating any road, street, or alley, notice shall within ten days thereafter be given by handbills posted in conspicuous places along the line of the proposed improvement. Such notice shall state the fact of the passage or approval of the ordinance, and the date of the passage or approval.

Drafted from Sec. 6, Act of June 7, 1901 P. L. 510.

Section 510. The width of a public road in townships of the first class shall not be less than thirty-three feet nor more than one hundred and twenty feet.

(Amendment of May 16, 1921, P. L. 666).

Drafted from Sec. 1, Act of June 7, 1907, P. L. 452, amending Sec. 7, Act of June 13, 1836, P. L. 551. The section before the amendment of 1921 provided that the maximum width shall not exceed eighty feet.

Section 511. Any township of the first class, adjacent to any city or borough, may lay out and open a public road, within the township,

which will be a continuation or extension of a street already opened and traveled by the public within such city or borough, of the same width as the street of which it is a continuation or extension. The opening of such road shall be subject to all of the foregoing provisions governing the laying out and opening of public roads in townships of the first class, excepting as to the width thereof.

Drafted from Sec. 1, Act of March 18, 1901, P. L. 51.

Section 512. Townships of the first class may vacate, in whole or in part, all streets, lanes, and alleys within their limits, laid out by this Commonwealth, whenever the same, for the portion to be vacated, shall have remained unopened for a continuous period of thirty years next preceding such vacation.

In exercising this power all proceedings for the ascertaining of damages, and the assessment of benefits incident thereto, shall be as provided in sections four hundred and ninety-five to five hundred and nine, inclusive, of this act.

Drafted from Secs. 1 and 2, Act of March 21, 1905, P. L. 46.

(b) Laying Out and Establishing Grades, and Grading, Paving, Constructing, and Repairing Roads, Etc., at Public Expense.

Section 525. The board of township commissioners may lay out, establish, and re-establish grades, and may grade, pave, and construct, all roads, streets, lanes, and alleys within the township lawfully laid out, and keep the same in good order and repair. The board may accept any roads, streets, lanes, or alleys dedicated to public use.

Drafted from part of Sec. 1, Act of May 24, 1901, P. L. 297.

(c) Paving upon Petition of Two-Thirds of Property Owners, and Curbing or Macadamizing Streets, Etc. Assessment of Two-Thirds of Cost and Expenses upon Abutting Property.

Section 535. Any township of the first class may pave, curb, or macadamize, with brick, stone, or other suitable materials any public street or thoroughfare, or part thereof, laid out and opened in the township. No street or thoroughfare, or any part thereof, shall be paved under the provisions of this section, except upon the petition of two-thirds of the owners of property, representing not less than two-thirds in number of feet front of the properties, abutting on the street or thoroughfare, or the part thereof, proposed to be paved.

Drafted from part of Act of April 22, 1909, P. L. 117.

Section 536. Two-thirds of the cost and expenses of any such improvement may be collected from the owners of the real estate abutting on such street or thoroughfare, or part thereof, by an equal assessment on the feet front. Such assessment shall be estimated by the person in charge of the work or by other competent authority designated by the township commissioners.

Drafted from part of Sec. 1, Act of April 22, 1909, P. L. 117.

Section 537. All assessments for paving, curbing, or macadamizing, under section five hundred and thirty-six of this act, shall be filed with the township secretary. The secretary shall give thirty days' written or printed notice that the assessments are due and payable to each party assessed, either by service on the owner or agent or left on the assessed premises. If the assessments, or any of them, remain unpaid at the expiration of said thirty days, they shall be placed in the hands of the township solicitor for collection. The solicitor shall collect the same, together with five per centum additional as attorney's commission, and interest from the completion of the improvement, by a municipal claim filed against the delinquent owner in like manner as municipal claims are now collected. When an owner has two or more lots against which there is an assessment for the same improvement, all such lots shall be embraced in one claim.

Drafted from part of Sec. 2, Act of April 22, 1909, P. L. 117. All provisions included in the municipal claim act of 1901 were omitted.

Section 538. The term "owner" means all individuals, corporations, public or private copartnerships, and associations having any title or interest in the property assessed. If the owner to whom notice is required to be given is a nonresident of the township, and his, her, or their place of residence is unknown, or if the ownership of the property cannot be ascertained, the notice shall be posted on the premises and a copy left with the occupant, if there be one.

Drafted from Sec. 5, Act of April 22, 1909, P. L. 117.

- (d) Grading, Paving, Curbing, Macadamizing, or Otherwise Improving Streets, Etc., Upon Petition of a Majority of Property Owners; and Assessment of Costs, Damages and Expenses According to Benefits.

Section 550. Townships of the first class may, upon petition of a majority of property owners in interest, based upon the number of feet abutting on the line of the proposed improvement, verified by affidavit of one of the parties to the petition, grade, pave, curb, macadamize, or otherwise improve any street, or public alley, or part thereof, within its limits, or which may be in whole or in part boundaries thereof.

Drafted from Sec. 1, Act of May 23, 1913, P. L. 348.

Section 551. The majority in interest required for a petition to the township commissioners shall be fixed as of the date of the presentation of the petition. After the passage or approval of any ordinance for the grading, paving, macadamizing, or otherwise improving any street, lane or alley, notice shall, within ten days, be given by handbills posted in conspicuous places along the line of the proposed improvement. Such notice shall state the fact of the passage of approval of the ordinance, the date of the passage or approval, that the petition for the improvement was signed by a majority in interest and number of owners of property abutting on the line of the proposed improvement, and that any person interested denying the fact that the petition was so signed, may appeal to the court of common pleas within sixty days from the passage or approval of the ordinance.

Drafted from part of Sec. 6, Act of May 23, 1913, P. L. 348.

Section 552. The court shall determine whether the improvement was petitioned for by the requisite majority. If the court finds that it was not so petitioned for, it shall quash the ordinance. If said court finds that it was so petitioned for, it shall approve the ordinance. If no appeal is taken, or if the court on appeal approves the ordinance, the township may proceed with the improvement. Thereafter all parties interested shall be estopped from denying the fact that the petition was signed by the requisite majority of property owners as required by this act.

Drafted from part of Sec. 6, Act of May 23, 1913, P. L. 348.

Section 553. The township or any person or persons interested may, at any time after such work or labor has been done, or material furnished, or damage done, present a petition in the court of common pleas, or to any law judge thereof in vacation. The court shall

appoint three viewers from the county board of viewers, and appoint a time, not less than twenty or more than thirty days thereafter, when the viewers shall meet upon the line of the proposed improvement and view the same and the premises affected thereby. The viewers shall give at least ten days' notice of the time of their first meeting, by publication in one or more newspapers published in the township or of general circulation therein, and by handbills posted upon the premises, or otherwise, as the court shall direct.

Drafted from part of Sec. 1, Act of May 23, 1913, P. L. 348.

Section 554. The viewers, having been sworn or affirmed faithfully, justly, and impartially to decide and a true report to make concerning all matters and things to be submitted to them or in relation to which they are authorized to inquire, and having viewed the premises and examined the property, shall hear all parties interested and their witnesses. They shall estimate and determine the value of property taken, injured, or destroyed, and to whom the same is payable; and shall assess the costs and expenses of the grading, paving, curbing, macadamizing, or otherwise improving said street, lane, or alley and the damages for property taken, injured, or destroyed, upon the property benefited, according to benefits.

Drafted from part of Sec. 2, Act of May 23, 1913, P. L. 348.

Section 555. The viewers shall prepare a schedule of the damages and benefits as determined in the preceding section, and shall give notice to all parties to whom damages are allowed, or upon whom assessments for benefits are made, of a time, not less than ten days after the date of such notice, and of a place where said viewers shall meet and exhibit said schedule and hear all exceptions thereto and evidence thereon. Notice of the time and place of such meeting shall be given, in the manner provided by law for the service of a summons in personal actions, upon all parties allowed damages or assessed benefits, as shown by said schedule, if the parties can be found in the township, or upon an adult person residing on the property affected by the assessment in case the owner or reputed owner cannot be found, and to all other persons by publication in the newspaper in which the first notice of the view was published. When no service is made upon the owner, reputed owner, or upon an adult person residing on the property affected, the notice, where publication thereof has been made, shall be properly served if tacked or conspicuously posted upon the premises.

Drafted from part of Sec. 2, Act of May 23, 1913, P. L. 348.

Section 556. After making whatever changes are necessary, the viewers shall make report to the court, showing damages and benefits.

allowed and assessed in each case, and shall file therewith a plan showing the improvement; the properties taken, injured, or destroyed, thereby, and the properties benefited.

Drafted from part of Sec. 2, Act of May 23, 1913, P. L. 348.

Section 557. The damages sustained and the costs and expenses incurred by making the improvements may be paid either in whole or in part by the township, or in whole or in part by assessments upon the property benefited, as the viewers may determine and the court approve.

If assessments are made on the property benefited, the viewers shall first estimate and determine the damages apart from the benefits, and shall then assess the damages or so much thereof as they deem just and reasonable, upon the properties peculiarly benefited by the improvements. All property for which damages have been allowed may be included in the assessment, if, in the judgment of the viewers, such properties will be benefited by the improvements. The viewers shall report the assessments to the court. The total assessment for benefits shall not exceed the total costs, damages, and expenses awarded and agreed upon.

Drafted from Sec. 3, Act of May 23, 1913, P. L. 348.

Section 558. When said report is filed, notice shall be given by publication once in the newspaper or newspapers publishing the notice provided for in section five hundred and fifty-three of this act. The notice shall state the date of the filing of the report and shall contain a schedule of the damages and benefits as shown therein. The notice shall further state that unless exceptions to the report are filed or an appeal for a jury trial is demanded within thirty days from the date of its filing, the report will be confirmed absolutely.

Drafted from part of Sec. 2, Act of May 23, 1913, P. L. 348.

Section 559. The viewers may be appointed at any time before or after the entry, taking, appropriation, or injury of any property or materials for constructing said improvements, or before or after the commencement of the improvements. All court costs incurred in the proceedings shall be defrayed by the township.

Drafted from Sec. 4, Act of May 23, 1913, P. L. 348.

Section 560. Upon the filing of the report of the viewers, or any two of them, in the court, any party interested may, within thirty days thereafter, file exceptions thereto. The court may confirm the report, or modify, change, or otherwise correct the same, or change the assessments made therein, or refer the report back to the same or new viewers, with like power as to their report. When the report

is first filed in court the prothonotary thereof shall mark it confirmed nisi, and in case no exceptions are filed thereto within thirty days he shall enter a decree as of course that the report is confirmed absolutely.

Drafted from part of Sec. 5, Act of May 23, 1913, P. L. 348. See also Act of May 10, 1921, P. L. 428, Sec. 1743.

Section 561. Within thirty days after the report is filed any party whose property is taken, injured, or destroyed, or who is assessed benefits, may appeal to the court of common pleas and demand a trial by jury. Upon the trial of any such appeal in court, the report of the viewers, as finally approved, confirmed, modified, or changed by the court, shall be prima facie evidence of the benefits therein mentioned. In case the party appellant does not obtain a verdict, more favorable than the report of the viewers, as finally confirmed, modified, or changed, the appellant shall not recover any costs on the appeal.

Drafted from part of Sec. 5, Act of May 23, 1913, P. L. 348. See also Act of May 10, 1921, P. L. 428, *infra* Sec. 1743.

Section 562. Within six months after the confirmation, modification, changing, or correction of any report, or after the verdict of the jury and final judgment, any interested party may appeal to the Superior or Supreme Court.

Drafted from part of Sec. 5, of May 23, 1913, P. L. 348.

The time for taking an appeal to the Superior or Supreme Court has been changed from thirty days to six months in accordance with the decision in *Scranton Sewer*, 213 Pa. 4.

Section 563. No such appeals shall prevent the filing of liens by any township of the first class for any assessment made by said report. Upon the final determination of the issue, the court shall make such order as to liens filed as shall appear right and proper.

Drafted from part of Sec. 5, Act of May 23, 1913, P. L. 348.

Section 564. The report as finally confirmed shall be conclusive as to any assessments made therein to pay the costs, damages, and expenses of the improvement.

All assessments for benefits to pay damages, costs, and expenses shall bear interest at the expiration of thirty days after they are finally ascertained and fixed, and shall be payable to the treasurer or proper officer of the township.

Drafted from parts of Secs. 5 and 6, Act of May 23, 1913, P. L. 348.

Section 565. The right of petition for appointment of the board of viewers, the right of exception thereto and of appeal to the Superior

and Supreme Court, is hereby conferred upon any taxpayer of such township who would be affected by the portion of the cost, damages, and expenses imposed upon the township. If the township authorities shall fail, within six months after final decree of confirmation absolute of any report of viewers, to file a municipal lien for the amount of assessment against any owner or reputed owner, any taxpayer of the township may, within six months thereafter, file such lien on behalf of the township, within said period of six months, and may take any necessary steps for collection and revival thereof. No appeal from the assessment in said report of damages for property taken, injured or destroyed, or from any assessment of such damages upon properties taken, injured or destroyed, shall have the effect of delaying the absolute confirmation of the report as to all assessments unappealed from, or from which no appeal shall lie, and in any proceeding to enforce collection of any lien, no defense shall be permitted to be imposed which might have been set up on exception to or appeal from the report of said viewers.

This section is new.

(e) **Grading, Paving, Curbing, Macadamizing, or Otherwise Improving Connecting Streets, Additional Widths of State Highways, Et Cetera.**

Section 585. Townships of the first class may, without petition of property owners, grade, pave, curb, macadamize, and otherwise improve public streets and thoroughfares, or parts thereof, when said streets or thoroughfares do not exceed one thousand feet in length and connect two streets or thoroughfares theretofore paved or improved.

Townships of the first class may without petition of property owners, grade, pave, curb, macadamize, and otherwise improve any additional width of any State highway, when a defined width of such State highway is being or has been permanently improved by the State Highway Department. Any such improvement shall be made only with the consent and approval of the State Highway Department.

(Amendment of April 21, 1921, P. L. 267).

Drafted from Sec. 1, Act of May 12, 1911, P. L. 307. The last paragraph was added by this amendment.

This section was amended twice at the session of 1921.

Section 585. Townships of the first class may, without petition of property owners, grade, pave, curb, macadamize, and otherwise improve public streets, highways, and thoroughfares, or parts thereof, laid out and opened in the township, or which have been adopted

by the Board of Township Commissioners as township streets, and entered and received in the general plan of streets and alleys of the township.

Sec. 585. Act of July 14, 1917, P. L. 840, as amended by Sec. 1, Act of May 25, 1921, P. L. 1123.

Drafted from Sec. 1, Act of May 12, 1911, P. L. 307.

This amendment eliminated the provisions in the original section limiting the improvement to streets not exceeding one thousand feet in length, and required that the improvements should be to streets adopted and entered upon the general plan.

Section 586. The ordinance authorizing such improvement shall be adopted by an affirmative vote of three-fourths of the members of the board of commissioners of the township. No such ordinance shall be finally adopted in less than thirty days from the date of its introduction. Copies of such ordinance shall be published in a newspaper in the township, or circulating therein, once a week for two weeks, and by at least five handbills posted along the proposed improvement ten days before the final passage of such ordinance, and by mailing a notice to each owner of property abutting on said improvement, at his last known post-office address, at least ten days before the final passage of such ordinance.

Section 587. The board of commissioners may collect the cost and expense of such improvement from the owners of real estate bounding or abutting thereon, by an equal assessment on the foot-front. Said assessment shall be made and collected as provided in sections five hundred and thirty-five and five hundred and thirty-eight, inclusive, of this act.

(Amendment of May 25, 1921, P. L. 1123, Sec. 2).

Drafted from Sec. 2, Act of May 12, 1911, P. L. 307.

This amendment permits the collection of the cost of the improvement instead of two-thirds of the cost, as provided in the original section.

**(f) Grading, Curbing, Paving, Macadamizing Boundary Streets,
Et Cetera.**

Section 600. Townships of the first class may enter into agreements with adjoining boroughs for the grading, paving and curbing, or macadamizing, of streets and alleys which may be boundaries between such townships and boroughs; and may provide in such contract that the damages, cost, and expenses of such improvement shall be divided between such townships and boroughs in proportions agreed upon.

Drafted from Sec. 1, Act of July 10, 1901, P. L. 637.

Section 601. In grading, paving and curbing, or macadamizing, any such streets or alleys, townships of the first class shall exercise such power upon petition of a majority of the property owners only, in interest and number, abutting the line of the proposed improvement within the township limits, to be verified by the affidavit of one of the petitioners; a majority in interest of owners of undivided interests in any piece of property to be treated as one person asking that such improvement be made.

Drafted from part of Sec. 2, Act of July 10, 1901, P. L. 637.

Section 602. The portion of the damages, costs and expenses agreed to be paid by any township shall be ascertained, and the benefits incident thereto shall be assessed and collected, in the manner provided in sections five hundred and fifty to five hundred and sixty-four of this act.

Drafted from part of Sec. 2, Act of July 10, 1901, P. L. 637.

(g) Township Aid in the Improvement of County Roads.

Section 610. Whenever the county commissioners are about to improve any road or street in any townships of the first class, and the part of such road or street so to be improved, will be less than three-fifths of the total width of said road or street as laid out or dedicated, the board of township commissioners may, by ordinance, enter into an agreement with the county commissioners, providing that the county improve said road or street for a width of twenty-four feet or a width equal to three-fifths (3-5) of the total width of said road or street.

Drafted from part of Sec. 1, Act of June 19, 1913, P. L. 541.

Section 611. Such ordinance shall stipulate that the township shall bear thirty-three and one-third per centum of the total cost of such improvement, and the county shall bear the remaining cost thereof. It shall further provide that the county commissioners may issue permits determining the manner in which public service or other corporations, or individuals, shall place under such road or streets, pipes, conduits, telegraph lines, or other devices. The ordinance shall also provide that, after such road or street is improved, it shall be the duty of the county to keep and maintain such improved road or street in good repair. The township may police such road or street.

Drafted from the second paragraph of Sec. 1, Act of June 19, 1913, P. L. 541.

Section 612. The board of township commissioners may assess the whole or any part of the one-third (1-3) of the total cost of said

improvement upon the real estate abutting upon the improved road or street according to the foot-front rule or according to benefits, as the board of township commissioners shall by ordinance determine.

Drafted from part of Sec. 2, Act of June 19, 1913, P. L. 541.

Section 613. No ordinance shall be passed providing for the assessment of costs or expenses, as provided in the next preceding section, except upon the petition of a majority in number or of a majority in interest of the owners of property abutting on the line of the proposed improvement, requesting the township commissioners to join with the county commissioners in the improvement of the road or street, which petition shall be verified by the affidavit of one of the petitioners; one-half in interest of owners of undivided interests in any one piece of property shall be treated as one person and sufficient to bind said property for the purpose of such petition.

Drafted from the proviso of Sec. 2, Act of June 19, 1913, P. L. 541.

Section 614. When the costs and expenses, or any part thereof, are to be paid for by the foot-front rule, the township shall assess the cost and expense upon the real estate abutting on the line of the improvement, by an equal assessment on said property in proportion to the number of feet the same fronts on the respective road or street improved. The commissioners may provide for an equitable reduction from the frontage of lots at all street and other intersections, and at other places where, from the peculiar or the pointed shape of the lots, an assessment for the full frontage would be inequitable.

Drafted from part of Sec. 2, Act of June 19, 1913, P. L. 541.

Section 615. When the costs and expenses, or any part thereof, is to be paid for by the real estate abutting, according to benefits, the same shall be assessed by viewers appointed by the court of common pleas in the manner provided in sections five hundred and fifty to five hundred and sixty-four, inclusive, of this act.

Drafted from part of Sec. 2, Act of June 19, 1913, P. L. 541.

(h) Plans of Streets.

Section 625. Every township of the first class shall have a general plan of its streets, and alleys, including those which have been or may be laid out but not opened. Such plan shall be filed in the office of the engineer or other proper office of the township, and all subdivisions of property thereafter made shall conform thereto. No streets or alleys, or parts thereof, laid out and confirmed, shall afterwards be altered without the consent of the commissioners of

the township. No person shall be entitled to recover any damages for any improvements placed or constructed within the lines of any street or alley after the same has been located or ordained on the plan provided for by this section.

(Amendment of May 16, 1921, P. L. 634).

The original section was drafted from Sec. 7, Act of May 23, 1913, P. L. 348. The amendment of 1921 eliminates the requirement that maps or plots of streets or alleys must be approved by the township commissioners before they can be entered of record in any public office of the county.

Section 626. That in townships of the first-class, all plans, plots, replots of lands laid out in building lots, and the streets, alleys, or other portions of the same, intended to be dedicated to public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto and located within the limits of the township, shall be submitted to the Board of Township Commissioners, and approved by it, before it shall be recorded; and it shall be unlawful for the recorder of deeds of the county wherein said land is situate to receive or record such plan unless the same shall bear thereon, by indorsement or otherwise, the approval of the Board of Township Commissioners of the township wherein the land is situated.

(Amendment of May 16, 1921, P. L. 634, Sec. 2).

This section is new.

Section 627. Any person violating any of the provisions of Sections 625 and 626 of this act shall be guilty of a misdemeanor. Upon conviction thereof any such person shall be sentenced to pay a fine not exceeding five hundred dollars (\$500).

(Amendment of May 16, 1921, P. L. 634, Sec. 2).

This section is new.

CHAPTER XI.

ROADS, STREETS, AND HIGHWAYS.

ARTICLE II.

GENERAL PROVISIONS.

(a) Laying Out Roads Under the General Road Law.

Section 640. Except as otherwise in this act provided, or except as otherwise provided by local or special legislation, all roads wholly within or partly within townships of the second class, and all roads partly within townships of the first class, shall be laid out, widened, changed, or vacated by the courts of quarter sessions, as heretofore, in the manner provided by the general road law and the amendments, additions, and supplements thereto. All damages and benefits occasioned by such laying out and the subsequent opening thereof, or by any such widening, changing, or vacation, shall be assessed, collected, and paid in the manner provided by the general road law and the amendments, additions, and supplements thereto.

This section is new and is declaratory of the existing law.

For provisions of the existing law relating to the laying out of public roads, see appendix chapter on roads, highways and bridges, subdivision (a) Secs. 1726 to 1760, inclusive.

(b) Opening and Repairing Roads, Et Cetera.

Section 660. Public roads or highways laid out by lawful authority in townships of the first and second class shall, as soon as may be practicable, be effectually opened and constantly kept in repair. All public roads or highways shall at all seasons be kept clear of all impediments to easy and convenient traveling, at the expense of the township.

Drafted from Sec. 6, Act of June 13, 1836, P. L. 551, and Sec 9, Act of April 28, 1899, P. L. 104.

In an action against a township for damages sustained by a fall over an unguarded slope, the existence of the road as a public highway may be established by evidence of long continued travel upon it and repairs by the township, and record evidence of the laying out of the road is not required: *Platt et ux. v. Newport Township*, 21 Luz. 355.

(c) Opening, Repairing, and Improving Roads and Highways on Division Line of Townships or Townships and Municipalities.

Section 670. Roads or highways laid out on a line which divides two townships shall be opened, made, kept clear and in repair, at the joint and equal charge of such townships. Any township of the first or second class necessarily incurring more than its due proportion of such charge may recover the excess so incurred from the other township.

Drafted from Sec. 10, Act of June 13, 1836, P. L. 551.

Section 671. When any public road is laid on the line of two townships, if the commissioners or supervisors of either township neglect or refuse to join with the commissioners or supervisors of the other township in opening or repairing such road, the commissioners or supervisors of the other township shall open, amend, and repair the road, and are authorized to collect a just proportion of the cost of the opening and repairing of such road from the township so neglecting or refusing to join in such opening or repairing. The commissioners or supervisors so neglecting or refusing shall be liable to a penalty of not less than four dollars and not exceeding fifty, to be recovered in a summary proceeding. All such penalties when recovered shall be paid into the township road fund.

Drafted from Sec. 33, Act of June 13, 1836, P. L. 551.

Section 672. Whenever the centre line of any highway constitutes the dividing line between a township of the first or second class and any city or borough, the commissioners or supervisors of the township, as the case may be, may, jointly with the county, enter into a contract with the city or borough providing for the grading, curbing, and macadamizing or paving of such highway.

Drafted from part of Sec. 1, Act of May 20, 1913, P. L. 267.

Section 673. Such alteration or improvement shall be constructed, and subsequent repairs shall be made, under the supervision of the proper authorities of the city or borough, in compliance with the laws governing the construction of such alterations or improvements in such city or borough, and with plans and specifications to be agreed upon, in writing, between the commissioners or supervisors of the township, as the case may be, and the city or borough and the commissioners of the county.

Drafted from Sec. 2, Act of May 20, 1913, P. L. 267.

Section 674. The cost of any alteration or improvement shall be borne one-half by the city or borough and one-half by the county and township in equal portions.

The cost of repairs shall be borne one-half by the city or borough and one-half by the township, or by the county and township in equal portions, or such other proportions as are agreed upon in the joint contract of the township with the county.

Drafted from Secs. 1 and 2, Act of May 20, 1913, P. L. 267.

(d) Changing or Altering Roads by Agreement with Property Owners.

Section 685. Whenever the commissioners or supervisors of any township of the first or second class deem it advisable to construct, change, or alter any part of any public road under their supervision, within this Commonwealth, and can agree with the property owners affected by such change as to damages, they may, upon payment of damages agreed upon, change or alter such part of such public road, as contemplated in such agreement, without the formality of a view.

Drafted from Sec. 1, Act of May 5, 1911, P. L. 123.

Section 686. No such change or alteration of any part of any public road shall be made the costs and expenses of which, including damages, shall exceed three hundred dollars. A petition setting forth the facts, accompanied by a map or draft of such proposed change, shall be presented to the court of quarter sessions for approval before such actual change is made; whereupon the new location, approved by the court, shall be taken to be the public road and the old location shall be vacated.

Drafted from the proviso of Sec. 1, Act of May 5, 1911, P. L. 123.

The Act of May 5, 1911, P. L. 123, was amended by the Act of July 11, 1917, P. L. 777, to the effect that no such change or alteration of any part of any public road shall be made the costs and expenses of which, to such township, including damages shall exceed three hundred dollars.

(e) Entry on Private Property to Secure Road Material and to Open Ditches and Drains.

Section 695. When road material cannot be conveniently obtained by contract at reasonable prices, the commissioners or supervisors of townships of the first or second class, as the case may be, may enter upon any land or enclosure within their township lying near the road, and dig, gather, and carry upon the road any stones, sand, or gravel which they think necessary to make, maintain, or repair the road. In exercising such right they shall do no unnecessary damage to the owners of the land, and shall repair any breaches of fences which they make.

This section is new but covers the provisions of Sec. 28, Act of June 13, 1836, P. L. 551.

Section 696. Whenever the commissioners or supervisors and the owners of any such materials cannot agree upon the price to be paid therefor, the value of such materials shall be estimated by any two of such three persons as may be agreed upon by such commissioners, or supervisors and owners.

Drafted from Sec. 29, Act of June 13, 1836, P. L. 551.

Section 697. If the commissioners or supervisors and owners cannot agree upon any persons to estimate the value of the materials taken, the owner may apply to a justice of the peace residing near the place where such materials were taken. Such justice shall appoint three persons — one on the nomination of the commissioners or supervisors, one on the nomination of the owner of such materials, and the third on his own suggestion. The decision of the persons so appointed, or any two of them, shall be entered upon the docket of such justice. If either party shall, after due notice, refuse or neglect to nominate such person, the justice shall appoint a person in his stead.

Drafted from Sec. 30, Act of June 13, 1836, P. L. 551.

Section 698. From any such decision, entered upon the justice's docket, an appeal may be taken by any party aggrieved to the court of common pleas, in the manner provided in section four hundred and seventy-one of this act.

This section is new.

Section 699. The township commissioners or supervisors of townships of the first or second class may enter upon any lands or enclosures, and cut, open, maintain, and repair such drains or ditches through the same as, in their judgment, are necessary to carry the water from the roads, streets, lanes, or alleys.

If any person shall stop, fill up, or injure any such drain or ditch, or shall divert or change the course thereof, without the authority of the commissioners or supervisors, such persons shall for every such offence forfeit and pay a sum not less than four dollars nor more than twenty dollars.

(Amendment of May 10, 1921, P. L. 427).

Drafted from Secs. 32 and 67, Act of June 13, 1836, P. L. 551.

The amendment of 1921 restored the words "in their judgment" in the first paragraph which were omitted from the act of 1836 by the original section.

A justice of the peace has jurisdiction of an action brought for the recovery of the penalty provided by this section but the record of the justice must show jurisdiction affirmatively, and where the record does not show that the action was brought for the recovery of a penalty the judgment of the justice will be reversed on certiorari *Supervisors of Ralpho Twp. v. Cardell*, 4 North L. J. 393; s. c. 15 Del. 389; 9 Lch. 107.

(f) **Opening, Making, Amending, and Repairing Highways and Bridges by Contracts with Taxpayers.**

Section 710. Any one or more taxpayers of any township of the first or second class may acquire the right to furnish all the materials and labor necessary for opening, making, amending, and repairing the public highways and bridges of such township, in manner and under the conditions set forth in sections seven hundred and eleven to seven hundred and sixteen, inclusive, of this act.

Drafted from Sec. 1, Act of June 12, 1893, P. L. 451.

Section 711. To acquire such right such taxpayers shall, before the beginning of the township fiscal year, present to the court of quarter sessions a petition setting forth that he, she, or it or they, are the owners of property assessed and taxed for road purposes in such township, the approximate number of miles of public road in such township, and the ability of the petitioner or petitioners to lay out, open, make, amend, and repair the public highways and bridges of such township, wholly at his, her, its, or their own expense, for the ensuing township fiscal year, and to pay the other expenses of such township as hereinafter provided, without any right against or claim upon such township for or by reason of the materials, labor, or money so furnished.

Drafted from part of Sec. 2, Act of June 12, 1893, P. L. 451.

Section 712. The petitioners shall, with the petition, present a bond to the township, in a sum equal to five hundred dollars for each mile of public road in the township, with one or more sufficient sureties, to be approved by the court, conditioned for the faithful performance of said petitioner or petitioners of his, her, its, or their duty, and to save the township harmless from any loss or claim by reason of failure so to perform said duty.

Drafted from Sec. 3, Act of June 12, 1893, P. L. 451.

Section 713. Notice of the intention of presenting the petition and bond, and of the time when said petition and bond will be presented to the court, shall be given to the commissioners or supervisors and auditors of the township, at least ten days before the same are presented.

Drafted from Sec. 4, Act of June 12, 1893, P. L. 451.

Section 714. When the petition, bond, and proof of the notice required in the preceding section, are presented to the court, the same shall be ordered filed; and the court, being satisfied of the good faith of the petitioners and the sufficiency of the petition, bond, and notice, shall order and direct the commissioners or supervisors, on

behalf of the township, to enter into a contract with the petitioner or petitioners. In such contract the petitioner or petitioners shall bind him, her, itself or themselves:

First. To open, make, amend, and repair the public highways and bridges of the township for the ensuing fiscal year in a lawful and workmanlike manner, wholly at the expense of the petitioner or petitioners, and without creating thereby any claim upon or right against the township for or by reason of the materials, labor, or money for persons employed.

Second. To indemnify and save harmless the township from all claim, damage, cost, or expense of whatever kind, for or by reason of any act or omission of said petitioner or petitioners whereby any claim, suit, or other demand may be set up or recovered against the township.

Third. To pay, within sixty days from the beginning of the fiscal year, to the following officers of such township, the following sums, to be received by said officers in full for all demands against such township for their respective services as such officers of the township for the fiscal years for which the said contract is made, which shall be in lieu of the compensation otherwise in this act provided for such officers; namely,—To each township secretary, the sum of fifty dollars; to each of the auditors of such township, the sum of twenty-five dollars; to an attorney, to be elected by such supervisors or commissioners as counsel for the township, the sum of fifty dollars; to each supervisor or commissioner, the sum of two hundred and fifty dollars.

Drafted from Sec. 5, Act of June 12, 1893, P. L. 451. The salary provisions are new.

Section 715. In consideration of the obligations set out in the preceding section to be assumed and performed by the petitioner or petitioners, the supervisors or commissioners, on behalf of such township, shall stipulate that the township will not assess, levy, or collect any tax for road purposes during the fiscal year for which such contract is made.

Drafted from Sec. 6, Act of June 12, 1893, P. L. 451.

Section 716. The commissioners or supervisors shall view and inspect the making and repairing of the roads in such townships, at least once during every month, and satisfy themselves that the petitioners have fully complied with their contract, before final settlement and expiration of contract. If, at any time, the commissioners or supervisors shall see that any portion of the roads need repair, they shall notify the petitioners to repair the same. In case said petitioners fail to repair said road within five days

after notice, the commissioners or supervisors are empowered to purchase such materials and employ such men as may be necessary to repair such road, and charge the same to the petitioners.

Drafted from part of Sec. 2, Act of June 12, 1893, P. L. 451.

(g) Highways Crossing Railroads. Special Uses of Highways.

Section 725. Every township of the first or second class, constructing a highway across a railroad, shall construct the same above or below the grade thereof unless permitted by the Public Service Commission to construct the same at grade.

(Amendment of May 16, 1921, P. L. 564, Sec. 8).

This section is new. The amendment of 1921 made no change in the section, but added the words "Special Uses of Highways" to the sub-heading. (g).

Section 726. Any such crossing of a railroad by a highway, or any vacation of any highway crossing a railroad, shall be constructed only in the manner prescribed by and under the jurisdiction of the Public Service Commission. The compensation for damages to the owners of adjacent property, taken, injured, or destroyed shall be ascertained, fixed, and paid in the manner prescribed in the Public Service Company Law.

(Amendment of May 16, 1921, P. L. 564, Sec. 8).

This section is new. The amendment added no new matter to this section.

Section 727. No railroad or street railway shall hereafter be constructed upon any township highway; nor shall any railroad or street railway crossing, nor any gas-pipe, water-pipe, electric conduits, or other piping be laid upon, or in, nor shall any telephone telegraph, or electric light, or power poles, or any coal tipples or any other obstructions, be erected upon, or in any portion of a township highway, except under such conditions, restrictions, and regulations, as may be prescribed by the State Highway Department.

(Amendment of May 16, 1921, P. L. 564, Sec. 8).

This section is new and was added by this amendment.

(h) Guide Posts and Index-Boards.

For additional provisions relating to this subject see appendix, chapter on roads, highways and bridges, subdivision (r), Secs. 1856 to 1857, inclusive.

Section 735. The commissioners or supervisors of townships of the first and second class shall erect posts at the intersection of all public roads, and at one of the angles where any public road crosses another public road, and shall firmly fix thereon boards of metal signs, with index hands pointing to the direction of such roads;

providing that if a tree, trolley pole, telephone pole, or telegraph pole is so erected that it can be used in place of a post, and permission has been secured from the owner thereof, such tree, or pole may be used in place of a post. On such boards and signs shall be inscribed, in large and legible characters, the name of the town, village, or place to which such roads lead, and the distance thereto computed in miles: Provided, where any public highway intersects or crosses a State Highway, application for a permit shall be made by the commissioners or supervisors to the State Highway Department for the erecting of such signs.

(Amendment of May 16, 1921, P. L. 554, Sec. 1).

Drafted from Sec. 61, Act of June 13, 1836, P. L. 551.

The provision relating to the erection of signs on trees and poles and the proviso are new.

Section 736. If any commissioner or supervisor neglects or refuses, after twenty days personal notice of the absence of any index boards or signs provided for in the last preceding section, or that such sign or index board has been so worn or defaced as to be useless, to put up, or repair, or keep in repair such signs or index boards, such commissioner or supervisor shall be liable to an indictment for a misdemeanor, and upon conviction shall be sentenced to a fine not exceeding fifty dollars at the discretion of the court.

(Amendment of May 16, 1921, P. L. 554, Sec. 2).

The original section was drafted from Sec. 32, Act of June 13, 1836, P. L. 551.

The time in the original section was changed to twenty days and the offence was made a misdemeanor by the amendment of 1921.

Section 737. It shall be unlawful for any person to wilfully destroy, remove, injure, or deface any guide-post or sign or index-board erected upon or near any public street, road, or bridge by the authorities of any township, or erected, with the consent of the authorities having jurisdiction over such street, road, or bridge, by any club, association, or other organized body for the direction, guidance, or safety of travelers.

Drafted from Sec. 1, Act of April 23, 1909, P. L. 171.

Section 738. All such signs of wood, metal, or other substance, affixed to trees or posts in or upon any highways, properly erected, in such manner that they do not interfere with travel; or upon fences, telegraph, telephone, trolley or other poles, with the permission of the owners thereof; or upon private grounds near roads, where consent has been obtained from the owners and tenants there-

of,—shall be within the meaning of the provisions of the next preceding section.

Drafted from Sec. 2, Act of April 23, 1909, P. L. 171.

Section 739. Any person violating sections seven hundred and thirty-seven and seven hundred and thirty-eight of this act shall be guilty of a misdemeanor, and shall pay a fine of not less than ten dollars and not more than twenty-five dollars, with all costs of prosecution, together with the value of such sign so destroyed, removed, or defaced. In default of payment of said fine, costs, and expenses, he shall undergo an imprisonment in the county jail for not less than five nor more than sixty days.

Drafted from part of Sec. 1, Act of April 23, 1909, P. L. 171, and Sec. 69, Act of June 13, 1836, P. L. 551.

(i) Protection of Highways from Snow-Drifts.

Section 750. Whenever any highways, in townships of the first or second class, are so located as to render them liable, on account of high wind during the winter season, to be so filled with snow as to make them impassable, and in the judgment of the supervisors or commissioners, as the case may be, such drifts of snow can be avoided by the removal of any fence erected along either side of such highway and replacing the same by a fence constructed of posts, wire, and boards, or rail, combined, such supervisors or commissioners may agree with the owners of such fences upon a plan for the erection of a fence constructed of posts, wire, and board, or rail, combined. The township may pay the owners of such fences a sum not to exceed the first cost of the wire used in the construction of such fences. The wire used in the construction of such fences shall be without barbs. This section shall not apply to any stone wall, hedge, or ornamental fence.

Drafted from Sec. 1, Act of May 26, 1897, P. L. 98.

(j) Laying Out and Opening Roads Leading to Driving-Parks, Fair-Grounds, Et Cetera.

Section 760. The commissioners or supervisors of townships of the first or second class, as the case may be, shall, upon the petition of persons interested in maintaining grounds as driving-parks, fair-grounds, places of holding annual Grand Army or soldiers' or sailors' encampments or reunions, or township and general elections, asking for roads across the improved lands of any person, from any public road or highway to said grounds, go upon the lands described in such petition and view the same. If the commissioners or supervis-

ors decide that there is occasion for such road, they shall proceed to lay out the same, and shall assess such damage as, in their opinion, the owner of said improved lands will sustain by the opening of such road.

Drafted from Sec. 1, Act of May 9, 1889, P. L. 178.

Section 761. The amount of damage, if accepted by the owner of said improved lands, shall be paid by the persons at whose request such road was laid out. On the payment of such damages, the persons at whose request said road was laid out may open the same for the use for which it was designed. If required by the owner of the land, the persons opening such road shall fence the same and keep said fences in repair.

Drafted from Sec. 1, Act of May 9, 1889, P. L. 178.

Section 762. In case said owner of the lands, through which such road is laid out, does not accept of the amount of damage assessed by said commissioners or supervisors, and the owner of the land and the persons asking for such road cannot agree upon the amount of damage, the persons asking for such road shall make and execute a bond, with sureties, in double the amount of damage assessed by the commissioners or supervisors, and the same shall be submitted to the commissioners or supervisors, and if approved by them the same shall be filed with the township secretary and kept by him for the benefit of the owner of the land.

Drafted from Sec. 2, Act of May 9, 1889, P. L. 178.

Section 763. After the approval and filing of said bond, the persons asking for such road shall have the right to open and use the same, and after opening said road the owner of said land shall have the right to the same proceedings, to assess damages against the persons who petitioned for said road, as is now provided by the general road law for assessing damages for the laying out and opening of public roads. Any party aggrieved by the assessment may appeal to the court of common pleas and demand a trial by jury, in the manner provided in section four hundred and seventy-one of this act. The petition, together with all proceedings thereon, shall be returned to the township secretary, who shall enter the same of record as in other road cases.

Drafted from Sec. 2, Act of May 9, 1889, P. L. 178.

(k) Lanes and Alleys Declared Nuisances by Board of Health or Health Authorities.

Section 775. Whenever the board of health or health authorities of any township of the first or second class shall declare as a nuisance

any public alley, lane, or passageway, any two or more owners of property adjacent or abutting upon the same may present their petition, verified by oath or affirmation, to the court of quarter sessions, setting forth the facts regarding such nuisance, and praying that said alley, lane, or passageway may be vacated. Such petition shall be accompanied by a certificate of the board of health or health authorities of the township, setting forth that they have declared such alley, lane, or passageway a public nuisance.

Drafted from part of Sec. 1, Act of June 20, 1911, P. L. 1087, amending sec. 1, Act of April 17, 1905, P. L. 193.

Section 776. The court shall thereupon appoint a jury of view of three men from the county board of viewers. The jury, being sworn or affirmed to faithfully perform its duties, shall give notice to all parties likely to be affected by the proceedings of the time and place of the first meeting, in such manner as the court shall direct.

Drafted from part of Sec. 1, Act of June 20, 1911, P. L. 1087, amending sec. 1, Act of April 17, 1905, P. L. 193.

Section 777. After the first meeting, the jury shall proceed to view the premises, hear all parties interested and their witnesses, and shall prepare a report of findings and recommendations as to whether or not such alley, lane, or passageway, or part thereof, should be vacated, and in such report shall award damages and assess benefits to the property affected.

Drafted from part of Sec. 1, Act of June 20, 1911, P. L. 1087, amending sec. 1, Act of April 17, 1905, P. L. 193.

Section 778. The jury shall give notice, in writing, to all parties affected by their report, at least ten days before the same is filed in court. The notice shall state the time and place where such report will be open to inspection.

Drafted from part of Sec. 1, Act of June 20, 1911, P. L. 1087, amending Sec. 1, Act of April 17, 1905, P. L. 193.

Section 779. Any person aggrieved by such report may file exceptions thereto with the jury; whereupon the jury shall reconsider their report, with the exceptions, and change the same as justice may require. The report as finally prepared shall be filed in court.

Drafted from part of Sec. 1, Act of June 20, 1911, P. L. 1087, amending sec. 1, Act of April 17, 1905, P. L. 193.

Section 780. Any person affected by the report shall have an appeal to the court of common pleas within thirty days after the report is filed, and the procedure on such appeal shall be the same as in actions of trespass.

Drafted from Sec. 1, Act of April 17, 1905, P. L. 193, as amended by Sec. 1, Act of June 20, 1911, P. L. 1087.

Section 781. At the end of the period allowed for an appeal, the report shall be absolutely confirmed by the court as to such awards or assessments from which no appeals have been taken. The costs, damages, and expenses of such vacation, over and above all benefits, shall be paid by the township.

Drafted from Sec. 1, Act of April 17, 1905, P. L. 193, as amended by Sec. 1, Act of June 20, 1911, P. L. 1087.

Section 782. No alley, lane, or passageway shall be vacated in any case where the vacating deprives any lot abutting thereon of the sole means of ingress or egress otherwise than to or from the front line thereof, nor where it was created by grant or contract, and not theretofore accepted by the public.

Drafted from Sec. 1, Act of April 17, 1905, P. L. 193, as amended by Sec. 1, Act of June 20, 1911, P. L. 1087.

(l) Grades of Highways.

Section 810. In the construction or repair of any highway, in any township of the first or second class, it shall be unlawful to raise such highway above the ordinary grade thereof when a drain or culvert shall be constructed under such highway, or when such highway shall be constructed or repaired over such drain or culvert. That this section shall not be construed in any manner to interfere with the work of the State Highway Department in the reconstruction or improvement of any State highway or State-aid highway, or when a township improves a township road, under the direction, plans, and specifications of the State Highway Department.

Drafted from Sec. 1, Act of June 15, 1911, P. L. 982.

(m) Assessment of Property Outside Limits of Township for Street Improvements.

Section 820. Whenever any street or alley, entirely within the limits of any township of the first or second class, shall divide such township from any other municipality or township located in the same county, the property on the side of the street or alley, opposite the line of such township of the first or second class, shall, for a depth of one hundred and fifty feet, be assessed for municipal improvements on such streets or alleys on which property shall abut. Such assessment shall be made in the same manner and in the same proceeding as is used for the assessment of property within such township of the first or second class for such improvement.

Drafted from Sec. 1, Act of May 28, 1907, P. L. 287.

(n) Cutting Trees of Shrubbery Within Limits of Highway.

Section 830. Where any highway, in any township of the first or second class, passes through or along forested lands, wild lands, or uncultivated lands, no trees growing within the limits of such highway at a distance beyond fifteen feet on either side of the centre line thereof, and which measure four inches or over in diameter at a point two feet from the surface of the ground, shall be cut down or destroyed by the commissioners, supervisors, or roadmasters employed by them or any other person, without first obtaining the consent of the abutting owners.

Whenever any highway, running through improved or cultivated lands, has been opened, and there are growing, along the roadsides and within the road limits, shrubs or trees not interfering with public travel, no commissioners, supervisors, or roadmasters, or other persons in their employ, shall remove, cut, injure, or destroy, or in any other manner interfere with, such shrubs or trees. If such removal or cutting is absolutely necessary for the purpose of maintaining the highway at its highest efficiency the commissioners, supervisors, or roadmasters, or other persons in their employ, may so cut or remove such shrubs or trees, after notifying the abutting property owners and entering into an agreement with them relating to the removal, cutting, or interference with said shrubs or trees.

Drafted from Secs. 1 and 2, Act of April 1, 1909, P. L. 97.

Section 831. In either of the cases set forth in the preceding section, if the consent or agreement of the abutting property owners cannot be obtained, the board of commissioners or supervisors may appeal to a judge of the court of common pleas. The judge shall inquire into the facts of the case, and after hearing all parties in interest shall make such order as seems just, having due regard for the demand for road improvement as well as for the preservation of the trees. From such order there shall be no appeal.

Drafted from Secs. 1 and 2, Act of April 1, 1909, P. L. 97.

Section 832. All logs, cordwood, branch wood, or other forms of wood which shall be derived from the destruction or removal of any trees growing along the highways, shall be surrendered to and remain the property of the abutting owners.

Drafted from Sec. 3, Act of April 1, 1909 P. L. 97.

Section 833. The commissioners or supervisors may clear out brush and other refuse from along the sides of the road to the legal width thereof. All such clearing and removal of brush and refuse shall be confined to growth that is within the limits hereinabove des-

cribed, and to the removal of branches that in any way interfere with public travel. No other injury, by fire, cutting, abrasion, or otherwise, shall be done to the standing timber.

Drafted from Sec. 1, Act of April 1, 1909 P. L. 97.

Section 834. If any commissioner, supervisor, roadmaster, or person in their employ, or any other person, shall cut down, kill, or injure any living tree, growing as aforesaid, and of a size four inches in diameter or greater at a point two feet from the surface of the ground, or shall violate any other provision of sections eight hundred and thirty to eight hundred and thirty-three of this act, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a penalty of not more than five dollars for every tree so cut, injured, or destroyed, with costs of suit. Such penalty shall be recovered in an action brought before any justice of the peace of the county wherein the offense was committed. If any defendant, upon conviction for any offense, fails or refuses to pay the fine and costs imposed, or does not give bond with approved surety to pay the same within ten days, he shall be committed to the county jail for not more than thirty days or until he has paid the fine and costs in full.

Drafted from Sec. 6, Act of April 1, 1909, P. L. 97.

Section 835. Nothing in sections eight hundred and thirty to eight hundred and thirty-four of this act shall be so construed as to prevent the commissioners, supervisors, or roadmasters, or other persons in their employ, from removing such roadside trees which may be thrown down by the wind or lodged in such position as to be a menace to public travel, or which by reason of any other cause may become a source of danger to the public. Every such act of removal shall be made with due regard to the circumstances of the case, so as to preserve the true intent and purpose of this act.

Drafted from Sec. 4, Act of April 1, 1909, P. L. 97.

(o) Penal Provisions.

Section 845. If any person working upon any road or highway in any township of the first or second class, or if any one in company with such person, shall ask money or reward, or by any means whatever shall extort or endeavor to extort any money, drink, or other thing, from any person traveling upon or near such road or highway, the person so offending shall for every such offense forfeit and pay a sum not exceeding five dollars.

If any township commissioner or township supervisor shall connive at any person so asking, demanding, or contriving to extort money, drink or any other thing from any person traveling as aforesaid, such

commissioner or supervisor shall, for every such offense, forfeit and pay a sum not exceeding ten dollars.

Drafted from Secs. 65 and 66, Act of June 13, 1836, P. L. 551.

Section 846. If any person shall stop or obstruct any public road or highway in any township of the first or second class, or shall commit any nuisance thereon by felling trees, making fences, turning the road, or in any other way, and shall not, on notice given by the township commissioners or township supervisors, forthwith remove the obstruction or nuisance and repair the damages done to such road, such person shall, for every such offence, forfeit and pay a sum not less than ten dollars nor more than forty dollars. Nothing in this section shall debar an indictment for any such nuisance, as in case of misdemeanor at common law.

Drafted from Sec. 68, Act of June 13, 1836, P. L. 551.

CHAPTER XII.

BRIDGES AND VIADUCTS.

ARTICLE I.

IN TOWNSHIPS OF THE FIRST CLASS.

(a) As Part of Road, Street, Highway, Lane, or Alley.

Section 855. Whenever, in the opening, grading, or improving of any road, street, highway, lane, or alley, in any township of the first class, it is necessary to erect or construct any bridge and the piers and abutments therefor, the same may be erected and constructed by the township as part of such road, street, highway, lane, or alley. In any such erection or construction the township may take, use, and occupy private property. All damages shall be awarded and benefits assessed as part of the proceeding to open, grade, or improve the road, street, highway, lane, or alley of which the bridge is a part.

Drafted from Sec. 1, Act of May 23, 1913, P. L. 348.

(b) Over Railroads.

Section 865. Townships of the first class may build bridges or viaducts over railroads, rivers, creeks, streams, and private property, or over railroads and any of them, or over railroads only, whether the bridges or viaducts are wholly or partly within the township limits, for the purpose of uniting two or more streets or highways or separate portions of the same street or highway. Such bridges and viaducts must in all cases cross railroads.

Drafted from Sec. 1, Act of June 15, 1911, P. L. 987.

Section 866. Townships of the first class may provide for the laying out and opening of the routes or locations for such bridges and viaducts, which shall be public highways. The proceedings for the laying out and fixing such locations, and for the opening thereof, shall be as provided in sections five hundred and fifty-three to five hundred and sixty-four, both inclusive, of this act, except that no petition of property owners shall be required therefor.

Drafted from part of Sec. 2, Act of June 15, 1911 P. L. 987.

Section 867. In case the township of the first class has not agreed with the owner of any land for the damages done or likely to be done by the erection of any such bridge or viaduct, the township may

appropriate the lands and property necessary, and the damages and benefits caused by such appropriation shall be assessed by viewers in the manner provided in sections five hundred and fifty-three to five hundred and sixty-four of this act.

Drafted from part of Sec. 3, Act of June 15, 1911, P. L. 987.

Section 868. The township of the first class may also enter into a contract with the county commissioners, and also with railroads, street railways, and other companies or parties interested, for the building and maintenance of such bridges or viaducts and for the payment of any damages caused by the location or erection thereof.

Drafted from Sec. 4, Act of June 15, 1911, P. L. 987.

Section 869. Nothing contained in the preceding section shall authorize a township of the first class to contract with a county for the maintenance of any bridge or viaduct which does not cross a place over which the county is authorized to build bridges; but such viaduct or bridge shall be maintained as a township structure, and the township is authorized to contract with any party interested, except the county, for the maintenance of the same.

Drafted from latter part of Sec. 5, Act of June 15, 1911 P. L. 987.

Section 870. The contracts herein provided for may stipulate that the township of the first class, county, railroad company, street railway or other company, or party interested, shall pay a certain part of the contract price of the work, including damages, or may stipulate that each shall construct a certain portion of the work, and may provide otherwise for the payment of damages.

Drafted from part of Sec. 6, Act of June 15, 1911, P. L. 987.

Section 871. When any railroad company, street railway or other company, or party interested, agrees to pay a certain portion of the cost of such work, it shall pay the same into the township treasury, and the township treasurer shall pay the same over to the contractor as may be provided in the contract, but the amount to be paid by the county shall be paid directly to the contractor. The agreements may provide for the maintenance of the bridges and viaducts after their erection.

Drafted from part of Sec. 6, Act of June 15, 1911, P. L. 987.

Section 872. After any such contract has been entered into, the township of the first class, in conjunction with the county commissioners, shall have prepared plans and specifications of the entire work, and shall advertise for bids and award the contract to the lowest responsible bidder.

Drafted from part of Sec. 8, Act of June 15, 1911, P. L. 987.

Section 873. The contract for the work shall provide that the county shall pay its part of such bridge or viaduct, and the township shall contract for the other part of the work. The contract as to the township's part shall be based upon the appropriation made by the township for the part of the work for which it had agreed to pay, and the remaining part of the contract price shall be based upon the amounts the other parties have agreed to pay.

Drafted from part of Sec. 8, Act of June 15, 1911, P. L. 987.

Section 874. The contractor shall have a right of action against each party uniting in the contract provided for in sections eight hundred and seventy and eight hundred and seventy-one of this article, for the part thereof agreed to be paid by each party.

Drafted from part of Sec. 8, Act of June 15, 1911, P. L. 987.

Section 875. In case the county commissioners do not unite in the contract, or in case the viaduct does not cross any river, creek, stream, or place over which the county is authorized to build bridges, the township may contract for the construction of such bridge or viaduct and may pay for the entire work, or may contract with all or any of the other parties for such work. Plans and specifications shall be prepared, and advertisement shall be made for bids, by the township, and the contract shall be let in the manner hereinbefore provided.

Drafted from Sec. 9, Act of June 15, 1911, P. L. 987.

Section 876. Any of the contracts provided for may be recorded in the recorder's office of the county, and such record shall be notice to all persons who might be affected thereby.

Drafted from Sec. 10, Act of June 15, 1911, P. L. 987.

Section 877. Before any railroad which has not contributed to the cost of the construction of any such bridge or viaduct shall be permitted to run its tracks under or upon such bridge or viaduct, it shall enter into a contract with the township to thereafter pay a reasonable part of the upkeep thereof.

Drafted from Sec. 7, Act of June 15, 1911, P. L. 987.

CHAPTER XII.

BRIDGES AND VIADUCTS.

ARTICLE II.

GENERAL PROVISIONS.

(a) Over Marshy or Swampy Grounds, Creeks, Rivulets, Gullies, Canals, and Railroads.

Section 890. The commissioners or supervisors of townships of the first or second class, in making and repairing the roads, shall make and maintain within their township sufficient causeways of stone or timber on marshy or swampy grounds. They shall also make and maintain sufficient bridges over all small creeks, rivulets, deep gullies, canals, and railroads, where the same is necessary for the ease and safety of travelers.

Such bridges over canals or railroads shall not obstruct the railroad or canal over which it is built. Nothing in this section shall release railroad or other companies or the Commonwealth from the requirements of existing laws.

Drafted from Sec. 31, Act of June 13, 1836, P. L. 551.

Section 891. In the construction and maintenance of such causeways and bridges, all damages shall be awarded and benefits assessed as part of the proceeding to lay out, open, make, or repair the road of which the causeway or bridge is a part.

This section is new.

(b) Over Streams, Railroads, and Canals on Township Boundaries.

Section 900. Where a small creek or a railroad or canal, over which a bridge is necessary, is on the boundary line of two townships, the bridge shall be built and maintained at the joint and equal expense of the townships, by their respective commissioners or supervisors, in the manner directed by sections six hundred and seventy and six hundred and seventy-one of this act in the case of public roads which may be the division line of townships.

Drafted from Sec. 34, Act of June 13, 1836, P. L. 551.

Section 901. Whenever a creek, railroad, or canal, over which a bridge is necessary, is on the division line of a township of the

first or second class and a municipality, the township shall unite with such municipality in the construction and maintenance of such bridge and pay an equal share of the expenses incident thereto.

Drafted from Sec. 34, Act of June 13, 1836, P. L. 551, and Sec. 1, Act of April 12, 1855, P. L. 220.

Section 902. If a bridge is built over a railroad or canal by virtue of the provisions of sections nine hundred and nine hundred and one of this act, such bridge shall not obstruct the railroad or canal over which it is built. Nothing in said sections shall release railroad or other companies or the Commonwealth from the requirements of existing laws.

Drafted from Sec. 1, Act of April 12, 1855, P. L. 220.

(c) Maintenance, Repair, and Rebuilding of Bridges Built by County.

Section 910. Whenever a bridge or part thereof has been built by the county, or the whole or part of the money necessary to build it has been furnished by the county, and the bridge has not been entered on record as a county bridge, such bridge shall be maintained, kept in repair, and rebuilt, when necessary, by the township or townships of the first or second class in which, or on the boundary line of which, it is located, without rendering the county liable for the same.

Drafted from Sec. 1, Act of June 15, 1911, P. L. 970, amending Sec. 1, Act of June 11, 1879, P. L. 146; and from Sec. 2, Act of June 11, 1879, P. L. 146.

(d) Fines and Penalties for the Protection of Bridges.

Section 920. If any other person shall wilfully ride, drive, or lead, or cause another person to ride, drive, or lead, any horse or other beast of burden faster than a walk when crossing any wooden or iron bridge, in any township of the first or second class, having an arch of the length or span of forty-five feet or upwards, such person shall, for every such offense, forfeit and pay a sum not less than five dollars nor more than thirty dollars.

If any person shall wilfully drive or cause to be driven any horned cattle faster than a walk when crossing any such bridge, such person shall, for every such offense, forfeit and pay a sum not less than five dollars nor more than thirty dollars.

If any person shall carry fire over such bridge, except in a lantern or in some vessel in which it will be fully secured, such person shall forfeit and pay the sum of five dollars. The fines herein provided

shall not be collected if the notice of the provisions of this section have not been set up in the manner hereinafter required.

Drafted from Secs. 70, 71 and 72, Act of June 13, 1836, P. L. 551, and Sec. 1, Act of March 18, 1864, P. L. 68.

Section 921. The commissioners or supervisors of townships of the first or second class shall, within their respective townships, put up and maintain in a conspicuous place, at or near each end of all bridges of iron or other materials erected at the expense of the public and having an arch of the length or span of forty-five feet or upwards, a notice, in large and legible characters, of the fines and penalties provided for the protection of such bridges, under the penalty of a sum not exceeding twenty dollars.

If any such bridge is built across the township boundary line, the township commissioners or supervisors shall put up and maintain such notices only at or near the end of the bridge within their township.

Drafted from Sec. 63, Act of June 13, 1836, P. L. 551.

Section 922. All fines and penalties which may be incurred under any of the provisions of sections nine hundred and twenty and nine hundred and twenty-one of this act shall be recoverable, in the name of the Commonwealth, at the instance of any person who will sue therefor, in the same manner as debts of like amount are recoverable with costs of suit. One moiety thereof shall be paid to the person recovering the same, and the residue shall be paid into the treasury of the township for the use of the township.

Drafted from Sec. 75, Act of June 13, 1836, P. L. 551.

CHAPTER XIII.

SIDEWALKS.

For other provisions relating to this subject, see appendix,
Secs. 1925 to 1931.

ARTICLE I.

IN TOWNSHIPS OF THE FIRST CLASS.

(a) Footways Constructed by Township Along Highways.

Section 950. Townships of the first class may construct footways along the township highways, at the expense of the township.

Drafted from Sec. 1, Act of May 24, 1901, P. L. 297, amending Sec. 7, Clause 1, Act of April 28, 1899, P. L. 104.

(b) Establishing Width and Location of Sidewalks.

Section 960. The commissioners of any township of the first class, upon the request of any land owner whose land fronts upon a public highway within such township, may establish the width and location for a sidewalk along each side of said highway along the lands of such owner. The width of the walk on each side of said highway shall not be less than six feet for roads fifty feet in width or less, and for roads over fifty feet in width shall be ten feet in width. When said sidewalks are so established, such land owner shall pay for and keep the same in repair.

Drafted from Sec. 4, Act of June 26, 1895, P. L. 324.

(c) Grading, Paving, and Curbing Sidewalks in Villages Upon Petition of Owners of a Majority of the Frontage in Lineal Feet.

Section 970. Whenever a majority of the owners in lineal feet of property fronting on either side of a public highway in any village in a township of the first class, by petition request that a sidewalk, with or without curbing, be constructed along that side of the highway between certain points, at the expense of the property owners, the board of township commissioners may, by ordinance, require the owners of property abutting on that side of the highway, between designated points, to grade and pave the sidewalk in front of their

respective property in the manner prescribed in the ordinance, and also to curb the same if deemed necessary.

The ordinance shall provide for written notice to be given to the property owners to construct such sidewalk in front of their respective properties.

Drafted from part of Sec. 12, Act of April 28, 1899, P. L. 104.

Section 971. If such owners fail to so pave and curb such sidewalk within sixty days from notice of the ordinance, the board of township commissioners may cause the same to be done, and collect the cost thereof from the abutting property owners in proportion to their frontage. If such cost is not paid, the commissioners may file municipal liens therefor against the abutting properties in the court of common pleas, and include therein a penalty of twenty per centum on the amount of the cost of the work.

Drafted from part of Sec. 12, Act of April 28, 1899, P. L. 104.

(d) Laying Out, Grading, Curbing, and Paving Sidewalks Within Towns or Villages.

Section 980. The boards of township commissioners may survey, lay out, enact, and ordain footwalks, pavements, boardwalks, culverts, and drains over and upon the land abutting on turnpike roads, state highways, or county roads where the same pass through any town or village, and fix the size and width thereof. Damages for any taking or injury of any property, and benefits of (to) any property caused by any action under this section, shall be assessed and paid for as provided in sections five hundred to five hundred and eight of this act, relating to the widening of roads and streets by township commissioners.

The commissioners may require the grading, paving, and curbing of such footwalks, pavements, boardwalks, culverts and drains by the owners of the land fronting thereon in accordance with general regulations to be prescribed by ordinance.

(Amendment of May 20, 1921, P. L. 962.)

Drafted from Act of April 23, 1903, P. L. 265.

The amendment of 1921 extended the power of township commissioners to lay out, enact and ordain footwalks, etc., upon land abutting on state highways or county roads in addition to turnpike roads as contained in the original section.

Section 981. The board of township commissioners in townships of the first class may require and direct the grading, curbing, and paving of the sidewalks and footwalks along the highways within

any town or village by the owners of the lots fronting thereon, in accordance with general regulations prescribed by ordinance.

Drafted from Act of April 23, 1903, P. L. 265.

Section 982. On failure of any owner of land to do any work required under the two preceding sections of this act, within the time prescribed by the township ordinance, the township commissioners may cause the same to be done, and collect from the owners the cost of the work and material, together with a penalty of ten per centum thereon to cover the expense of collection, by filing a municipal claim therefore against the abutting property.

Drafted from Act of April 23, 1903, P. L. 265.

(e) Sidewalks Along Turnpike Roads, State Highways, or County Roads Within Towns or Villages.

Section 990. Whenever a turnpike road managed and controlled by a private corporation, a state highway, or a county road runs through any town or village in any township of the first class, the board of township commissioners having first obtained the written consent of the corporation having control of such road in the case of a turnpike road, the State Highway Commissioner in the case of a state highway, or the county commissioners in the case of a county road, may ordain and establish sidewalks, with or without curbing, along either one or both sides of such turnpike road, state highway, or county road as the case may be within the lines of the same. The township commissioners may charge the cost of construction of such sidewalk and curbing, if any, to the owners of the abutting properties according to frontage.

(Amendment of May 20, 1921, P. L. 962, Sec. 2.)

The original section was drafted from Sec. 1, Act of April 22, 1905, P. L. 283. The amendment added the matter relating to state highways and county roads.

Section 991.* The ordinances establishing any such sidewalk shall specify the width thereof, and shall require such grading and filling as is necessary. It shall also specify the kind and character of the pavement, or provide for the construction of a boardwalk in any case, instead of a paved sidewalk. The manner of laying the pavement may be specified in the ordinance, or provided for by general ordinance or by the regulation of a committee of the board.

Drafted from Sec. 2, Act of April 22, 1905, P. L. 283.

Section 992. The ordinance shall provide for written notice to be given to the property owners to grade and construct such sidewalk and curbing, if any, in front of their respective properties within a certain period, not less than thirty days from the date of service of such notice. Service of such notice shall be made by handing the same to the property owner, or by leaving it at his place of residence, if he has one in the county, or, if he does not reside in the county, by mailing the notice to his address, if his address can be obtained. In all cases a copy of such notice shall be served upon the occupant of the premises.

(Amendment of May 20, 1921, P. L. 962, Sec. 3.)

The original section was drafted from Sec. 4, Act of April 22, 1905, P. L. 283. The amendment added the words "and curbing, if any."

Section 993. Should any property owner fail to comply with the requirements of the ordinance within the time specified in the notice, the board of township commissioners may cause the sidewalk and curbing, if any, in front of his property, to be constructed in accordance with the requirements of the ordinance, and collect the cost thereof, including costs of grading and any other incidental matters, together with the penalty of ten per centum, by action of assumpsit, or by filing a municipal lien against said property.

(Amendment of May 20, 1921, P. L. 962, Sec. 4.)

The original section was drafted from Sec. 4, Act of April 22, 1905, P. L. 283. The amendment added the words "and curbing, if any."

Section 994. If, at the time of the passage of the ordinance, a sidewalk paved with brick, stone, or concrete has already been constructed by a property owner in front of his property, the township commissioners may accept such walk as a compliance with the ordinance, although not constructed according to the specifications thereof. If such sidewalk is not accepted, the township shall bear the expense of reconstructing it.

Drafted from Sec. 3, Act of April 22, 1905, P. L. 283.

(f) **Establishing, Grading, and Curbing Sidewalks Along the Sides of any Principal Street or Highway Leading to or Connecting Cities, Boroughs, Villages or Places of Public Resort.**

Section 1005. The board of township commissioners of any township of the first class may ordain and establish sidewalks within the lines of any principal street or highway in the township, along either one or both sides thereof, leading directly to or connecting cities, boroughs, villages, or places of public resort, for such distance as the board of township commissioners may deem proper, and may provide

for the grading and curbing of the same. In case the street or highway is a turnpike or other road managed and controlled by a corporation, incorporated under the laws of this Commonwealth, or a state highway or a county road, the written consent of the corporation managing and controlling the same, the State Highway Commissioner, or the county commissioners, as the case may be, shall first be obtained.

(Amendment of May 20, 1921, P. L. 962, Sec. 5.)

The original section was drafted from Sec. 1, Act of June 25, 1913, P. L. 561. The amendment added the matter relating to state highways and county roads.

Section 1006. Such sidewalk shall in no case be less than five feet in width, nor leave a roadway of less than twenty feet in the clear.

Drafted from Sec. 3, Act of June 25, 1913, P. L. 561.

Section 1007. The ordinance establishing any such sidewalk shall specify the width thereof, and shall require such grading and filling as is necessary. It shall also specify the kind and character of the pavement, or provide for the construction of a boardwalk, instead of a paved sidewalk. The manner of laying the pavement may be specified in the ordinance, or provided for by general ordinance or by the regulation of a committee of the board.

Drafted from Sec. 3, Act of June 25, 1913, P. L. 561.

Section 1008. The ordinance shall provide for written notice to be given to the property owners to grade and construct such sidewalk in front of their respective properties, within a certain period, not less than three (3) months from date of the service of such notice. Service of such notice shall be made by handing the same to the property owner, or by leaving it at his place of residence, if he has one in the county, or, if he does not reside in the county, by mailing the notice to his address, if his address can be obtained. In all cases a copy of such notice shall be served upon the occupant of the premises.

Drafted from Sec. 5, Act of June 25, 1913, P. L. 561.

Section 1009. When such notice is given on or after the first day of September in any year, the property owners affected shall not be in default for failure to construct the sidewalk until the first day of June of the following year.

Drafted from Sec. 5, Act of June 25, 1913, P. L. 561.

Section 1010. Should any property owner fail to comply with the requirements of the ordinance within the time specified, the board of township commissioners may cause the sidewalk in front of his property to be constructed in accordance with the requirements of

the ordinance, and collect the proportion of the expense thereof which under the ordinance is chargeable upon the property owner, including the costs of grading and any other incidental matters, together with the penalty of ten per centum, by action of assumpsit or by filing a municipal lien against said property.

Drafted from Sec. 5, Act of June 25, 1913, P. L. 561.

Section 1011. The board of township commissioners may charge to the owners of the properties abutting on such sidewalk, according to frontage, such part of the expense of the construction thereof, including grading and curbing, as they deem reasonable. Such part of the expense shall in no case exceed fifty per centum of the total cost of the construction of the sidewalk, except in the case of such sidewalks as are ordained and established along either one or both sides of any principal street or highway of the said township, leading directly to, or connecting cities, boroughs, or villages, where the distance between said connecting points does not exceed one-half mile within the lines of said street or highway, in which case the board of township commissioners may charge to the owners of the properties abutting on said sidewalk, according to frontage, such part or all of the expense of the construction thereof, including grading and curbing, as they may deem reasonable. The remainder, if any, of the expense of the construction of the sidewalk shall be paid out of the township funds.

(Amendment of May 20, 1921, P. L. 965.)

The original section was drafted from Sec. 2, Act of June 25, 1913, P. L. 561. The clause relating to the charges to owners where the sidewalks are on streets connecting cities, etc., is new.

Section 1012. When any sidewalk has been constructed by an abutting property owner in front of his property, as required by the ordinance, the township commissioners, upon the presentation to them of a receipted bill for the cost of constructing such sidewalk, shall forthwith pay to the property owner the part of the expense of the construction of the sidewalk which, by the terms of the ordinance, is to be defrayed from the township funds. If such part of the expense of the construction of the sidewalk, which is to be defrayed from the township funds, is not paid forthwith to the property owner by the board of township commissioners, the property owner may collect the same in a suit or suits against the township, as debts of like amount are now by law collected.

This section was drafted from Sec. 6, Act of June 25, 1913, P. L. 561.

The clause in Sec. 6 of said act of 1913 providing for the exoneration of the property owner from taxes until full reimbursement of expenditures, has been eliminated and provision inserted for suit against the township.

Section 1013. If, at the time of the passage of the ordinance, a sidewalk paved with brick, stone, or concrete has already been constructed by a property owner in front of his property, the township commissioners may accept such walk as a compliance with the ordinance, although not constructed according to the specifications thereof. If such sidewalk is not accepted, the township shall bear the expense of reconstructing it.

Drafted from Sec. 4, Act of June 25, 1913, P. L. 561.

(g) Repair of Sidewalks.

Section 1025. In townships of the first class, where sidewalks have been established by township ordinance, the owner of the abutting property shall keep the sidewalk immediately in front of his property in good order and repair, and at all times free and clear of all obstruction to safe and convenient passage.

Drafted from Sec. 1, Act of June 19, 1911, P. L. 1066.

Section 1026. If the owner of any property neglects to perform the duty required of him in the preceding section, the township commissioners may serve written notice upon him requiring him to do what is necessary. If such property owner fails to comply with the requirements of such notice within thirty days from the date of its service, the township commissioners may make the necessary repairs or remove any obstruction. The cost of the same, together with a penalty of ten per centum, shall be paid by the delinquent property owner, and may be collected by action, in the name of the township, as debts of like amount are collected, or the township commissioners may file a municipal lien against the property.

Drafted from Sec. 2, Act of June 19, 1911, P. L. 1066.

Section 1027. The notice provided for in the preceding section may be served on the property owner by leaving the same at his place of residence, or, if he has no residence in the township, then by leaving the same with the tenant or occupant of the premises and mailing a copy thereof to the owner at his last known address.

Drafted from Sec. 3, Act of June 19, 1911, P. L. 1066.

CHAPTER XIII.

SIDEWALKS.

ARTICLE II.

IN TOWNSHIPS OF THE SECOND CLASS.

Section 1040. The supervisors of any township of the second class, upon the request of any land owner whose land fronts upon a public highway within such township, may establish the width and location for a sidewalk along each side of said highway along the lands of such owner. The width of the walk on each side of said highway shall not be less than six feet for roads fifty feet in width or less, and for roads over fifty feet in width shall be ten feet in width. When said sidewalks are so established, such land owner shall pay for and keep the same in repair.

Drafted from Sec. 4, Act of June 26, 1895, P. L. 324.

Section 1041. The township supervisors of townships of the second class may construct sidewalks of board, plank, or cement, or other suitable material, along the highways, through towns and villages in such townships, upon the petition of the abutting property owners. The expense of the construction of such sidewalk shall be paid by the township and the abutting property owners, in proportion agreed upon between the supervisors and the property owner before the construction of such sidewalk. Not more than ten per centum of the road taxes raised in the township for the current year shall be used for such purposes.

Drafted from Sec. 1, Act of June 3, 1911, P. L. 638.

Section 1042. Supervisors of townships of the second class may regulate, by ordinance, the grade and width of sidewalks constructed along the highways in such townships, and shall have general supervision over the same.

Drafted from Sec. 2, Act of June 3, 1911, P. L. 638.

CHAPTER XIV.

SEWERS AND DRAINS.

For other provisions relating to this subject, see appendix,
Secs. 1932 to 1934.

ARTICLE I.

IN TOWNSHIPS OF THE FIRST CLASS.

- (a) Establishing and Constructing Sewer and Drainage System, Sewer Connections, and Rates; Disposal of Sewage; Assessment of Cost of Construction.

Section 1070. Townships of the first class may establish and construct a system of sewers and drainage, locating the same, as far as practicable, along and within the lines of the public roads of the township, as seem advisable to the commissioners. The township commissioners may permit, and, where necessary for the public health, require, adjoining and adjacent property owners to connect with and use the same. All persons so connecting shall pay, in addition to the cost of making such connection, a monthly or annual rate prescribed by ordinance. Such monthly or annual rate shall constitute a lien, until paid, against the property so connecting with such system, and the amount thereof may be recovered by due process of law.

Nothing in this section shall be construed to repeal or modify any of the provisions of the Public Service Company Law.

Drafted from Sec. 7, Clause III, Act of April 28, 1899, P. L. 104, as amended by Sec. 1, Act of May 24, 1901, P. L. 294.

Section 1071. Where it is reasonably impracticable, in the judgment of the commissioners, in any part of such system, to carry such sewers or drains along the lines of public roads, the commissioners may locate and construct so much of the same as is necessary through private lands.

Drafted from Sec. 7, Clause III, Act of April 28, 1899, P. L. 104, as amended by Sec. 1, Act of May 24, 1901, P. L. 294.

Section 1072. The commissioners shall make the necessary provision for the disposition of the sewage and drainage within, or for carrying the same beyond, the limits of the township; and, to this end, they are hereby authorized to enter into contracts with other municipalities and other corporations or persons, and to purchase,

acquire, enter upon, take, appropriate, occupy, and use such lands, rights, and interests therein, within the corporate limits of other townships or boroughs, as shall be necessary for the proper location, construction, maintenance, use, and operation of sewer, main drains or disposal plants, including such lands, rights, and interests therein as shall be necessary for future additions to and enlargements of such sewage facilities, and as may be necessary to carry out the plans and specifications upon which a permit has been issued by the Commissioner of Health. In accordance with the provisions of the act of April twenty-second, one thousand nine hundred and five, entitled "An act to preserve the purity of the waters of the State for the protection of the public health."

Drafted from Sec. 7, Clause III, Act of April 28, 1899, P. L. 104, as amended by Sec. 1, Act of May 24, 1901, P. L. 294. The latter part of this section is new.

The report of the conference committee on the bill, which is the form in which it appears as signed by the Governor, shows the entire section in one sentence. The period after "Health" and the capital "I" beginning a new sentence is evidently a subsequent error. The comma after "and operation of sewer," is also evidently an error in punctuation.

Section 1073. In the event of inability to agree with the owners, either for the land necessary for so much of the line of sewers and drains as are not located upon public roads, or for so much land as is required for the disposition of the sewage, the commissioners may enter upon said land and mark thereon the route and width necessary for the construction of the line of sewers or drains, or the boundaries of so much land as is necessary for disposition of such sewage, and occupy the said land for such purposes. For all damage done or suffered, or which accrues to the owner or owners of such land, by reason of the taking of the same, the funds of the township raised by taxation shall be pledged and deemed as security.

Drafted from Sec. 7, Clause III, Act of April 28, 1899, P. L. 104, as amended by Sec. 1, Act of May 24, 1901, P. L. 294.

Section 1074. The court of common pleas, on application thereto by petition either by the township commissioners or by the owner of the land, may appoint a jury of viewers from the county board of viewers, who shall not be the owners of property or residents in the township, and appoint a time, not less than twenty nor more than thirty days thereafter, when the viewers shall meet upon the land. Ten days' notice of such time and place shall be given to the petitioners and to the other party by the viewers.

Drafted from Sec. 7, Clause III, Act of April 28, 1899, P. L. 104, as amended by Sec. 1, Act of May 24, 1901, P. L. 294.

Provision has been made that the viewers shall be appointed from the county board of viewers, in conformity with the Act of June 23, 1911, P. L. 1123.

Section 1075. The viewers, having been first sworn or affirmed faithfully, justly, and impartially to decide and a true report to make concerning all matters and things to be submitted to them and in relation to which they are authorized to inquire, and having viewed the premises, shall estimate and determine what amount of damages, if any, has been or may be sustained by reason of such occupation, taking, and use, and to whom the same is payable, and shall make report thereof to court.

Drafted from Sec. 7, Clause III, Act of April 28, 1899, P. L. 104, as amended by Sec. 1, Act of May 24, 1901, P. L. 294.

Section 1076. When the report is filed in court the same shall be confirmed nisi. Thirty days after the filing of the report, if no exceptions thereto have been filed, nor an appeal to the court for a jury trial is taken, the report shall be confirmed absolutely.

Within thirty days after the filing of the report either party may file exceptions thereto, or appeal to the court and demand a trial by jury.

From such final confirmation of the report or from any judgment on a verdict of a jury, either party may, within six months, appeal to the Superior or Supreme Court.

This section is new.

Section 1077. The damages as awarded when the report is finally confirmed shall be entered as a judgment, and if the same is not paid within thirty days after the entry thereof execution to enforce the collection thereof may be issued, as in other cases of judgment against townships.

Drafted from Sec. 7, Clause III, Act of April 28, 1899, P. L. 104, as amended by Sec. 1, Act of May 24, 1901, P. L. 294.

Section 1078. The cost of construction of any system of sewers or drains, constructed by the authority of section ten hundred and seventy of this act, shall be charged upon the properties accommodated or benefited thereby to the extent of such benefits.

(Amendment of May 16, 1921, P. L. 641, Sec. 1.)

The original section was drafted from Sec. 1, Act of February 23, 1905, P. L. 22.

This same section was also amended by the Act of July 9, 1919, P. L. 797, which was superseded by the above amendment.

The amendment of 1921 to Secs. 1078, 1079, 1080, 1081, 1082, 1083, 1084 and 1085 practically restored the original provisions of the code with the important change that the benefits "shall be charged," instead of "may be charged."

Section 1079. Whenever a sewer system is constructed by a township of the first class for the accommodation of a certain portion onl-

of the township, the commissioners of such township may constitute the territory accommodated into a sewer district or divide it into several sewer districts. In every such case of division into several districts the commissioners shall make an estimate of the proportion of the cost of the sewer system which should equitably be charged on each of said districts, and declare and establish such apportionment by ordinance. No district shall be charged with more than its due proportion of the cost of the main sewers, pumping stations, et cetera, used jointly by more than one district; the aggregate amount charged on property in any such district shall not exceed the amount of such estimate, subject to the provisions of section ten hundred and eighty-two and ten hundred and eighty-three of this act. Where the whole of the township is accommodated by the system it may also be treated as a single district or divided into districts and be subject to the foregoing provisions.

(Amendment of May 16, 1921, P. L. 641, Sec. 2.)

The original section was drafted from Sec. 2, Act of February 23, 1905, P. L. 22.

Section 1080. Any amount not legally chargeable upon properties benefited shall be paid out of the general township fund.

(Amendment of May 16, 1921, P. L. 641, Sec. 3.)

The original section was drafted from Sec. 2, Act of February 23, 1905, P. L. 22.

This section was also amended by the Act of July 15, 1919, P. L. 978, which was superseded by the above amendment.

Section 1081. The charge for any such sewer construction in any township of the first class shall be assessed upon the properties accommodated or benefited, in either of the following methods:

(a) By an assessment, pursuant to township ordinance of each lot or piece of land in proportion to its frontage abutting on the sewer, allowing such reduction in the case of properties abutting on more than one sewer as the ordinance may specify. No assessment by frontage shall be made on properties of such a character as not to be lawfully subject to such manner of assessment; and each abutting property shall be assessed with not less than the whole amount of the benefit accruing to it and legally assessable.

(b) By an assessment upon the several properties abutting on the sewer in proportion to benefits. The amount of the charge on each property shall be ascertained as provided in sections ten hundred and eighty-two and ten hundred and eighty-three of this act.

(Amendment of May 16, 1921, P. L. 641, Sec. 4.)

The original section was drafted from Sec. 3, Act of February 23, 1905, P. L. 22.

This section was also amended by the Act of July 9, 1919, P. L. 797, Sec. 2, which was superseded by this amendment. The original clause (c) of this section was eliminated by the amendments.

Section 1082. In all cases where the township commissioners shall select the method provided by sub-division (b) of the foregoing section ten hundred and eighty-one, they shall petition the court of common pleas for appointment of viewers to assess benefits. In all cases where they shall neglect for a period of three months after the completion of the sewer system to either ordain assessments by frontage, or present a petition for appointment of viewers, taxpayers of the township whose property valuation as assessed for taxable purposes within the township shall amount to fifty per centum of the total property valuation as assessed for taxable purposes within the township, may present a petition to the court of common pleas of the proper county for the appointment of viewers to assess benefits, and in all cases where such taxpayers shall, within three months of the adoption of any ordinance levying an assessment under the method provided by subsection (a) of said section ten hundred and eighty-one, by petition state to said court that such assessment insufficiently represents the benefits accruing to abutting properties, they may include in such petition a prayer for the appointment of viewers to assess benefits. In either case the said court shall thereupon appoint three disinterested persons from the board of county viewers, neither of whom shall be a resident of that portion of the township which is accommodated by the sewer in question. The viewers, or a majority of them, having been sworn or affirmed to perform their duties with fidelity and impartiality, shall assess upon each piece of land abutting upon the line of said sewer system, which in their opinion is benefited by its construction, such amount as represents the benefit accruing to such lot. In no case shall the viewers, in assessing benefits to private property through which any sewer runs, take into consideration any damages which such property has sustained, but all such damages shall be assessed in the manner provided in sections ten hundred and seventy-four and ten hundred and seventy-seven inclusive of this act. The aggregate of the assessments in any sewer district shall not exceed the amount charged to such district for its share of the cost of the sewer construction, unless the same shall, by petition of taxpayers whose property valuation as aforesaid shall amount to fifty per centum of the total property valuation as assessed for taxable purposes within the township, presented within three months after the adoption of an ordinance providing for an assessment by frontage, be stated to insufficiently represent the amount of benefits to such properties, in which case the proceedings by taxpayers authorized above shall be applicable. Upon the filing of such a petition by taxpayers as aforesaid for appointment of viewers,

any assessment made by the commissioners and any proceedings thereunder shall be null and void.

(Amendment of May 16, 1921, P. L. 641, Sec. 5.)

The original section was drafted from Sec. 4, Act of February 23, 1905, P. L. 22. The authority to appoint viewers was transferred from the township commissioners to the court of common pleas. The matter relating to proceedings by taxpayers was added by the above amendment.

This section was also amended by the Act of July 9, 1919, P. L. 797, Sec. 3, which was superseded by this amendment.

Section 1083. The viewers, or a majority of them, shall make report in writing, specifying the amount assessed by them on each lot or parcel of land, and shall file the same with the township secretary within the time directed by the order appointing them. After the report is filed the viewers shall cause public notice thereof to be given by publication once a week for two weeks in two newspapers of the county having a general circulation in the township. Such notice shall state a time, not less than fifteen days after the filing of the report, and a place when and where the viewers will meet and exhibit their report, and hear all exceptions and objections thereto on behalf of the property owners or by representatives of the township, or taxpayers thereof. After the hearing of such objections the viewers shall make whatever changes they deem proper in their report. When such revision has been made, notice by advertisement in the two newspapers aforesaid once a week for two weeks, shall be given by the viewers of the date when their report will be filed in court, of the amount assessed against each lot or parcel of land, and the name of the owner or reputed owner, and a report in writing accompanied by a plan showing the improvement and the properties benefited, signed by said viewers, or a majority of them, specifying the amount assessed on each lot or parcel of land, shall be filed in the court of common pleas, and a copy thereof signed by the viewers or a majority of them also shall be filed at the same time with the township treasurer, and when the report is filed in court it shall be confirmed nisi. Within thirty days after the filing of any report the township or any other party interested may file exceptions thereto, or appeal to the court of common pleas therefrom and demand a trial by jury. At the end of said thirty days the report shall be confirmed absolutely as to all portions in respect to which no exceptions have been filed or appeal taken. The practice and procedure in respect to exceptions, appeal to the court of common pleas, and the Supreme or Superior Courts shall be in accordance with the provisions of the general law regulating the same matters following proceedings by viewers for assessment of damages, costs and expenses upon the properties benefited in the several municipalities of this Commonwealth.

The court of common pleas shall have the right to confirm the report of viewers, or to modify, correct, or otherwise change the assessments made therein, or refer the same back to the same or new viewers, with instructions to proceed anew, or to correct errors in procedure, or otherwise, with like power as to their report.

The right of exception to, or appeal from said report of viewers, within said period of thirty days, is hereby conferred upon the township or any taxpayer of the township, together with the right of appeal to the Supreme or Superior Court from any order, decree or judgment of the court of common pleas.

(Amendment of May 16, 1921, P. L. 641, Sec. 6.)

The original section was drafted from Sec. 5, Act of February 23, 1905, P. L. 22.

This section was amended by the Act of July 15, 1919, P. L. 978, which is superseded by the above amendment. Practically the entire section has been changed from its original reading.

See also Act of May 10, 1921, P. L. 428, Sec. 1743.

Section 1084. After the amount of the assessment charged upon the several properties has been established, either by ordinance making assessments according to frontage or by confirmation of any report of viewers in whole or in part, it shall be the duty of the township commissioners to file municipal liens for the assessments covered by such ordinance or confirmation within the time and in the manner provided by law; the same to be subject, in all respects, to the general law providing for the filing and recovery upon municipal liens. The amounts of all assessments shall be payable to the township treasurer for the use of the township. The commissioners shall also make out bills for the amounts charged against each property which shall be forthwith sent to all property owners residing in the township, and mailed to all such owners residing elsewhere whose address is known.

(Amendment of May 16, 1921, P. L. 641, Sec. 7.)

The original section 1084 was drafted from section 6 of the Act of February 23, 1905, P. L. 22. This section was repealed by section 3 of the Act of July 15, 1919, P. L. 978, and was replaced by section 7 of the Act of May 16, 1921, P. L. 641.

The original section did not provide for the filing of municipal liens, but this was specified in section 1085.

Section 1085. The costs of publication of notices in proceedings before viewers shall be paid by the township, upon presentation of bills approved by the court.

(Amendment of May 16, 1921, P. L. 641, Sec. 7.)

The original section 1085 was drafted from section 6 of the Act of February 23, 1905, P. L. 22. This section was repealed by section 3 of the Act of July 15, 1919, P. L. 978, and was replaced by section 7 of the Act of May 16, 1921, P. L. 641. All the provisions of the amendment are new.

(b) Contracts With Individuals or Corporations for Construction and Maintenance of Sewer and Drainage Systems.

Section 1095. In any case where, under the authority of section ten hundred and seventy of this act, a system of sewage and drainage covering any township of the first class in whole or in part shall have been approved and authorized by ordinance, the commissioners may enter into a contract with any responsible individual or individuals, or corporation, for the construction of such system of sewage or drainage, at the expense of such individual or individuals, or corporation. He, they, or it shall be entitled, under such contract, to exercise all the powers of the township in the construction, maintenance, and operation of such system of sewage or drainage, with the right to collect such charges in connection therewith as the commissioners prescribe, in as full manner as the same might have been collected by the township or the commissioners. In such contract the commissioners shall reserve to the township the right at any time, or after a prescribed time, to itself take possession of such system of sewage and drainage and its appurtenances, at a price and upon terms to be fixed in the contract.

Nothing in this section shall be construed to repeal or modify any of the provisions of the Public Service Company Law.

Drafted from part of Section 7, Clause III of the Act of April 28, 1899, P. L. 104, as amended by Sec. 1, of the Act of May 24, 1901, P. L. 294.

(c) Sewers and Drains in Streets or Alleys, or Over Private Property; Assessment of Cost of Construction According to Benefits.

Section 1105. Townships of the first class may construct sewers and drains in any street or alley, or through or on or over private property. The costs, damages, and expenses of the construction of any such sewer or drain shall be assessed and collected in the manner provided in sections five hundred and fifty-three to five hundred and sixty-four, both inclusive, of this act.

Drafted from section 1, Act of May 23, 1913, P. L. 348, so far as it authorizes townships of the first class to construct sewers.

(d) Sewers Under State and County Highways.

Section 1115. Townships of the first class may construct sewers and drains in and under any county or State highway within the township boundaries. In case of the construction of sewers upon county highways, the consent of the county commissioners of the county shall first be obtained; and in case of the construction of sewers upon any State highway, the consent of the State Highway Commissioner shall first be obtained.

Drafted from Sec. 1, Act of May 23, 1913, P. L. 353.

Section 1116. Whenever sewers have been or shall be laid or constructed by any first class township in and under such highways, such township may ascertain, levy, and collect the costs and expenses of the construction thereof from the abutting property holders, in the manner provided in sections five hundred and fifty-three to five hundred and sixty-four of this act.

Drafted from Sec. 2, Act of May 23, 1913, P. L. 353.

(e) Connecting With Sewer of Adjoining Municipality.

Section 1125. Any township of the first class may connect with an existing sewer, owned by any adjacent municipality, for sewage purposes, in the manner prescribed in the following sections of this article.

Drafted from Sec. 1, Act of July 17, 1901, P. L. 668.

Section 1126. Whenever any township of the first class shall desire to connect with the existing sewer of any adjacent municipality, an application shall be made by the board of commissioners to the court of quarter sessions setting forth that fact.

Drafted from part of Sec. 2, Act of July 17, 1901, P. L. 668.

The board of commissioners was substituted for councils to fit the designation of the township authorities.

Section 1127. If the court shall be of the opinion that such connection can be made without impairing the usefulness of the existing sewer, it shall appoint three viewers, who shall view the premises and investigate the facts of the case and shall assess the proportionate part of the expense of building the original sewer upon such township of the first class, and shall fix the proportion of the expense for repairs which the municipality and the township of the first class shall thereafter bear, and determine all other questions liable to arise in connection therewith.

Drafted from part of Sec. 2, Act of July 17, 1901, P. L. 668.

Section 112S. The viewers shall report to the court the result of their investigation, which report shall be confirmed within thirty days, unless exceptions thereto are filed. After confirmation of such report, or the disposal of any exceptions, any party interested may appeal from the decision of the court of quarter sessions to the Superior Court.

Drafted from part of Sec. 2, Act of July 17, 1901, P. L. 668.

CHAPTER XIV.

SEWERS AND DRAINS.

ARTICLE II.

JOINT SEWERS.

Section 1140. Townships of the first or second class may enter into agreements with municipalities or other townships for the purpose of building sewers, including trunk-line sewers or drains and sewage-disposal plants. Such agreement shall provide for the joint maintenance of the same.

Drafted from Secs. 1 and 2, Act of May 1, 1909, P. L. 306, as amended by the Act of June 15, 1911, P. L. 966.

Section 1141. No such sewer or plant shall be constructed until plans and specifications have been submitted to the State Department of Health and approved, in accordance with provisions of the act of April twenty-second, one thousand nine hundred and five (page two hundred and sixty), entitled "An act to preserve the purity of the waters of the State for the protection of the public health."

Drafted from Sec. 1, Act of May 1, 1909, P. L. 306, as amended by Sec. 1, Act of June 15, 1911, P. L. 966.

CHAPTER XV.

CONTRACTS WITH RAILROADS AND RAILWAYS.

ARTICLE I.

Section 1160. The commissioners or supervisors of any township of the first or second class may enter into contracts with any railroad company whose road enters the township, authorizing such railroad company to relocate, change, or elevate its road within the limits of the township, as in the judgment of the commissioners or supervisors is best adapted to secure the safety of lives and property and promote the interest of the township.

Drafted from Sec. 1, Act of June 9, 1874, P. L. 282.

Section 1161. Townships of the first or second class may enter into contracts with any street passenger railway company, surface, elevated or underground, or motor-power company leasing and operating the franchise and property of such company within the limits of the township; regulating the franchises, powers, duties, and liabilities of such companies and the respective rights of the contracting parties. Such contracts may inter alia provide for payments by the companies to the township, in lieu of the performance of certain duties, or the payment of license fees or charges imposed in favor of such township by the charters of the respective companies or by any general law or ordinances, for the appointment by the township of a certain number of persons to act as directors of such company, in conjunction with the directors elected by the stockholders of such company, and may further provide for the ultimate acquisition by the township, upon terms mutually satisfactory, of the leaseholds, property, and franchises of the contracting companies.

Drafted from Sec. 1, Act of April 15, 1907, P. L. 80.

Section 1162. To secure the removal of any street railway tracks, or to prevent the laying of any tracks authorized to be laid, or to change the route of any street railway on any street, a township of the first or second class may enter into a contract with a street railway or motor-power company, owning, leasing, or operating such tracks, for a period not exceeding fifty years, for such considerations and upon such conditions as may be agreed upon.

Drafted from part of Sec. 1, Act of May 3, 1905, P. L. 379.

Section 1163. Such contract may include a covenant providing that during the continuance thereof the consent of the township shall

not be granted to any other company to use, for street railway or passenger transportation purposes, any streets covered by such contract. Such covenant may be enforced by bill in equity against the township.

Drafted from part of Sec. 1, Act of May 3, 1905, P. L. 379.

Section 1164. The contract may also provide for the laying or re-laying of tracks, upon such terms and upon such conditions as may be agreed upon.

Drafted from part of Sec. 1, Act of May 3, 1905, P. L. 379.

Section 1165. No provision of this chapter shall be construed to repeal or modify any of the provisions of the Public Service Company Law.

This section is new.

CHAPTER XVI.

WATER-SUPPLY AND WATER-WORKS.

For other provisions relating to this subject See Sec. 381, Cl. XVII, and Sec. 386, Cl. III and in appendix, Secs. 2009 to 2011, inclusive.

ARTICLE I.

IN TOWNSHIPS OF THE FIRST CLASS.

Section 1180. Townships of the first class may contract with any adjoining municipality, owning a water-works system, for a supply of water for public and private uses to be delivered into the lines of the township at or near the boundary thereof.

This section does not authorize a contract between a township of the first class and a municipality for the supply of water in territory being supplied by a private company.

Drafted from Sec. 1, Act of April 9, 1915, P. L. 70.

Section 1181. A township making such contract may, by ordinance, provide and regulate and protect a system of distribution of the water, after a certified copy of the plans and surveys for such system, with a description of the sources from which it is proposed to derive the supply, are filed in the Department of Health, and a written permit for the construction of such system obtained from the Commissioner of Health, in accordance with the provisions of the act of April twenty-second, one thousand nine hundred and five (Pamphlet Laws, two hundred and sixty), entitled "An act to preserve the purity of the waters of the State for the protection of the public health."

Drafted from Sec. 2, Act of April 9, 1915, P. L. 70.

Section 1182. In providing for, regulating and protecting and extending its system of distribution of water, the township may occupy public highways, and may take, injure, or destroy private property. No highway under the jurisdiction of the State Highway Department shall be occupied until a permit therefor has been obtained from the State Highway Department. Property belonging to or used as a cemetery or a place of public worship, or any public or parochial school, or other educational or charitable institution or seminary, shall not be taken, injured, or destroyed by virtue of this act.

Drafted from Sec. 3, Act of April 9, 1915, P. L. 70.

Section 1183. If the compensation and damages arising from such taking, injury, or destruction of private property cannot be agreed upon, the township may tender its bond as security to the party claiming or entitled to any damages, or to the attorney or agent of any absent person, or to the agent or other officer of a corporation, or to the guardian or committee of any person under legal incapacity. The condition of the bond shall be, that the township shall pay or cause to be paid such amount of damages as the party shall be entitled to receive, after the same shall have been agreed upon or assessed in the manner provided in the following sections of this article.

In case the party or parties claiming damages refuse or do not accept the security so tendered, the township shall give the party, his or their agent, attorney, guardian, or committee, at least ten days' written notice of the time when the same will be presented to the court of common pleas for approval.

Thereafter the township may present its bond to the court, and when approved the bond shall be filed in court for the benefit of those interested. Recovery may be had thereon for the amount of damages finally determined, if the same is not paid or cannot be collected by execution on the judgment in the issue formed to try the question. Upon the approval of such security the township may enter into possession.

Drafted from Sec. 4, Act of April 9, 1915, P. L. 70.

Section 1184. In case the compensation for damages accruing from such taking, injury, or destruction has not been agreed upon by the parties in interest, the court of common pleas, or any law judge thereof in vacation, on application thereto by the township or any person interested in the property, shall appoint three members of the board of viewers of the county as a board of view, and appoint a time, not less than ten nor more than twenty days thereafter, when the board of view shall meet upon the property and view the same and the premises affected thereby.

Drafted from part of Sec. 5, Act of April 9, 1915, P. L. 70.

Section 1185. The board of view may be appointed before or at any time after the entry, taking, or appropriation of any property to be used for the purpose set forth in section eleven hundred and eighty-two of this act. They shall have power to administer oaths and adjourn their hearings, from day to day, as they find necessary.

Drafted from Sec. 7, Act of April 9, 1915, P. L. 70.

Section 1186. The board of view shall give at least five days' notice of the time of their first meeting, by personal service upon the owners, agents, attorneys, or representatives thereof, if they reside within the

county; otherwise, by handbills posted upon the premises, or by such other notice as the court shall direct.

The board of view, having been duly sworn or affirmed faithfully, justly, and impartially to decide and true report to make concerning all matters and things submitted to them and in relation to which they are authorized to inquire, and having viewed the premises or examined the property, shall hear all parties interested and their witnesses, and, having due regard to the advantages and disadvantages, shall estimate and determine the damages for the property taken, used, or appropriated, and to whom the same are payable.

They shall give at least ten days' notice thereof, in the manner herein provided, to all parties interested, of the time and place when the board of view will meet and exhibit their report and hear any exceptions thereto. After making whatever changes are necessary and proper, the board of view shall make report to the court showing the damages, if any are allowed, and shall file therewith a plan showing the properties taken, injured, or destroyed, and the names of the persons to whom such damages are payable.

Drafted from part of Sec. 5, Act of April 9, 1915, P. L. 70.

Section 1187. When the report of the board of view, or any two of them, is filed in court, any party may, within thirty days thereafter, file exceptions thereto. The court may confirm the report, or modify, change or otherwise correct it, or refer it back to the same or new viewers, with like power as to their report. Or, within thirty days from the filing of any report in court, any party whose property is so taken, used, or appropriated may appeal to the court of common pleas and demand a trial by jury. Any party interested therein may, within six months after final decree, have an appeal to the Superior or the Supreme Court.

Drafted from part of Sec. 6, Act of April 9, 1915, P. L. 70.

The time limit for taking an appeal to the Supreme or Superior courts was changed from thirty days to six months in accordance with the opinion in *Scranton Sewer*, 213 Pa. 4.

See also Act of May 10, 1921, P. L. 428, *infra*, Sec. 1743.

Section 1188. If no exceptions are filed or no demand made for trial by jury, within thirty days after the filing of such report, the same shall become absolute. The court may order what notices shall be given in connection with any part of said proceedings and may make all such orders as it deems requisite.

Drafted from part of Sec. 6, Act of April 9, 1915, P. L. 70.

See also Act of May 10, 1921, P. L. 428, *infra*, Sec. 1743.

Section 1189. The costs of the board of view and all court costs incurred in the proceedings, including advertising and printing and posting notices, shall be defrayed by the township.

Drafted from Sec. 8, Act of April 9, 1915, P. L. 70.

Section 1190. All damages when determined, shall be assessed against and paid by the township so taking, injuring, or destroying the property.

Drafted from Sec. 9, Act of April 9, 1915, P. L. 70.

CHAPTER XVI.

WATER-SUPPLY AND WATER-WORKS.

ARTICLE II.

CONSTRUCTION, ACQUISITION, AND MAINTENANCE OF WATER- WORKS IN CONNECTION WITH BOROUGHES.

Section 1205. Any township of the first or second class may unite with a borough in the construction or acquisition and maintenance of works for the supply of water.

Drafted from Sec. 1, Act of June 1, 1911, P. L. 541.

Section 1206. The construction of water-works, as provided for in the preceding section, shall be after plans for such water-works have been filed with the State Commissioner of Health, and a permit issued in accordance with the act of Assembly of April twenty-second, one thousand nine hundred and five (page two hundred sixty), entitled "An act to preserve the purity of the waters of the State for the protection of the public health."

Drafted from Sec. 2, Act of June 1, 1911, P. L. 541.

Section 1207. Whenever any township of the first or second class unites with a borough in the construction or acquisition and maintenance of water-works, the commissioners or supervisors of such township, after the passage of an ordinance or resolution to that effect, may join with the councils of such boroughs, now authorized by chapter six, article seventeen, section forty of the general borough act of May fourteenth, one thousand nine hundred fifteen (page three hundred and twelve,) so to join and apply to the court of common pleas for the appointment of a commission of water-works. Such commission shall be composed of citizens of each of the boroughs and townships so uniting.

Drafted from Sec. 10, Act of June 5, 1913, P. L. 445.

CHAPTER XVII.

PUBLIC BUILDINGS.

ARTICLE I.

GENERAL PROVISIONS.

Section 1220. The commissioners or supervisors of townships of the first or second class may procure a suitable lot of ground, and erect a suitable building thereon for a townhouse in which to hold elections, store road-machinery, hold meetings of township officers, and for other township uses.

Drafted from Sec. 1, Act of June 26, 1895, P. L. 324.

For other provisions relating to this subject see appendix, Secs. 1990 to 2008, inclusive.

Section 1221. For the purpose of procuring a lot of ground and erecting a building thereon, as provided in the preceding section of this act, the commissioners or supervisors may borrow money at a rate of interest not exceeding six per centum and issue bonds therefor.

(Amendment of May 16, 1921, P. L. 575).

Drafted from Sec. 2, Act of June 26, 1895, P. L. 324.

The above amendment eliminated a provision limiting the amount of indebtedness which might be incurred.

Section 1222. Townships of the first or second class may enter upon and appropriate private property, and also land heretofore granted or dedicated to public or other use, within the limits of such township, and which is no longer used for the purpose for which the same was granted or dedicated, for the erection thereon of a town-hall, hose-house, lockup, and such other public buildings as are necessary for public purposes.

Drafted from Sec. 1, Act of June 10, 1901, P. L. 555, as amended by Sec. 1, Act of April 15, 1913, P. L. 66.

Section 1223. No land or property used for any cemetery, burying-ground, public or parochial school, educational or charitable institution, seminary, or place of public worship shall be taken or appropriated by virtue of any power contained in the preceding section.

Drafted from part of Sec. 1, Act of June 10, 1901, P. L. 555, as amended by Sec. 1, Act of April 15, 1913, P. L. 66.

Section 1224. Whenever the commissioners or supervisors desire to acquire, enter upon, take, use, and appropriate private property

or lands for public buildings, they shall declare such intention by an ordinance duly enacted.

Drafted from Sec. 1, Act of June 10, 1901, P. L. 555, as amended by Sec. 1, Act of April 15, 1913, P. L. 66.

Section 1225. The compensation and damages arising from such taking, using, and appropriating of private property for such purposes shall be considered, ascertained, determined, awarded, and paid in the manner hereinafter provided.

Drafted from Sec. 1, Act of June 10, 1901, P. L. 555, as amended by Sec. 1, Act of April 15, 1913, P. L. 66.

Section 1226. If the compensation and damages arising from such taking, using, and appropriating of private property cannot be agreed upon, the township may tender its bond as security to the party claiming or entitled to damages, or to the attorney or agent of any absent person, or to the agent or other officer of a corporation, or to the guardian or committee of any person under legal incapacity. The condition of such bond shall be, that the said municipality shall pay or cause to be paid such amount of damages as the party is entitled to, after the same is agreed upon or assessed by viewers.

Drafted from Sec. 2, Act of June 10, 1901, P. L. 555.

Section 1227. In case the party claiming damages refuses or does not accept the security so tendered, the township shall give the party, his, or their agent, attorney, guardian, or committee at least ten days' written notice of the time when the same will be presented to the court of common pleas for approval. Thereafter the township may present its bond to the court. When approved the bond shall be filed in the court for the benefit of those interested. Recovery may be had thereon, for the amount of damages ascertained or finally determined, if the same be not paid or cannot be collected, by execution on the judgment in the issue formed to try the question. Upon the approval of such security, the township may enter into possession, take, hold, use, and enjoy the lands for the purposes aforesaid.

Drafted from Sec. 2, Act of June 10, 1901, P. L. 555.

Section 1228. Whenever the commissioners or supervisors desire to take any lands heretofore granted or dedicated to a use or purpose for which they are no longer used, they shall pass an ordinance declaring such intention, and shall thereupon petition the court of common pleas for leave to file the bond of such township for the purpose of securing any person or persons who may be injured by the taking of such lands. The court shall thereupon direct notice to be given by publication in at least two newspapers of the county. If no exceptions are filed to the bond on or before the day fixed in the

notice, the court shall approve the same. The court may increase the amount of the bond, and hear and determine all exceptions that are filed against the approval thereof. Upon the approval of such bond, the commissioners or supervisors may enter upon and take such lands for the purposes of erecting public buildings. The bond, which shall be in the name of the Commonwealth, for the use of any person or persons who are entitled to damage by reason of the taking of the lands, shall remain on file for their use and benefit.

Drafted from Sec. 3, Act of June 10, 1901, P. L. 555.

Section 1229. In case the compensation for damages, accruing from any appropriation under the provisions of section twelve hundred and twenty-two of this act, has not been agreed upon by the parties in interest, the court of common pleas, or any law judge thereof in vacation, on application thereto by the township or any person interested in such land and property, or any person damaged by any such appropriation, shall appoint three viewers from the county board of viewers, and appoint a time, not less than ten nor more than twenty days thereafter, when the viewers shall meet upon the property and view the same and the premises affected thereby.

Drafted from Sec. 4, Act of June 10, 1901, P. L. 555.

Section 1230. The viewers may be appointed before or at any time after the entry, taking, or appropriation of any property to be used for the purpose aforesaid. They shall have power to administer oaths and adjourn their hearings, from day to day, as they find necessary.

Drafted from Sec. 6, Act of June 10, 1901, P. L. 555.

Section 1231. The viewers shall give at least five days' notice of the time of their first meeting, by personal service upon the owners, agents, attorneys, or representatives of such property, if they reside within the county; otherwise, by handbills posted upon the premises, or by such other notice as the court shall direct.

The viewers, having been sworn or affirmed faithfully, justly, and impartially to decide and true report to make concerning all matters and things to be submitted to them in relation to which they are authorized to inquire, and having viewed the premises or examined the property, shall hear all parties interested and their witnesses, and, having due regard to the advantages and disadvantages, shall estimate and determine the damages for the property taken, used, or appropriated, and to whom the same are payable.

They shall give at least ten days' notice thereof, in the manner herein provided, to all parties interested, of the time and place when the viewers will meet and exhibit their report and hear any exceptions thereto. After making whatever changes are necessary and

proper, the viewers shall make report to the court showing the damages, if any allowed, and shall file therewith a plan showing the properties taken, used, and appropriated, and the names of the persons to whom such damages are payable.

Drafted from Sec. 4, Act of June 10, 1901, P. L. 555.

Section 1232. When the report of the viewers, or any two of them, is filed in court, any party may, within thirty days thereafter, file exceptions thereto. The court may confirm the report, or modify, change, or otherwise correct it, or refer it back to the same or new viewers, with like power as to their report. Or, within thirty days from the filing of any report in court, any party whose property is so taken, used, or appropriated may appeal to the court of common pleas and demand a trial by jury. Any party interested therein may, within six months after final decree, have an appeal to the Superior or the Supreme Court. If no exceptions are filed or no demand made for trial by jury within thirty days after the filing of the report, the same shall become absolute. The court may order what notices shall be given in connection with any part of said proceedings, and may make all such orders as it deems requisite.

Drafted from Sec. 5, Act of June 10, 1901, P. L. 555.

The time limit for appeals to the Supreme and Superior Courts has been changed from thirty days to six months in accordance with the opinion of the court in *Seranton Sewer*, 213 Pa. 4.

See also Act of May 10, 1921, P. L. 428, infra Sec. 1743.

Section 1233. The costs of the viewers and all court costs incurred in the proceedings, including advertising and printing and posting notices, shall be defrayed by the township.

Drafted from Sec. 7, Act of June 10, 1901, P. L. 555.

Section 1234. All damages, when determined, shall be assessed against and paid by the township so taking, using, and appropriating the property.

Drafted from Sec. 8, Act of June 10, 1901, P. L. 555.

Section 1235. In the preparation of specifications for the erection or alteration of any public building, when the entire cost of such work exceeds one thousand dollars, the architect, engineer, or person preparing such specifications shall prepare separate specifications for the plumbing, heating, ventilating, and electrical work, and the township of the first or second class shall receive separate bids upon each of such branches of work, and award the contract for the same to the lowest responsible bidder.

Drafted from Sec. 1, Act of May 1, 1913, P. L. 155.

Section 1236. In letting contracts for the erection of any public buildings, when plans and specifications for the same are submitted for bids they shall be accompanied by a list of quantities of material required for such building, to be prepared and furnished by the architect or engineer preparing the plans, which bill or list shall be attached to the specifications. No such list of material shall be taken as being guaranteed by the township of the first or second class submitting such plans and specifications.

Drafted from Sec. 1, Act of July 2, 1895, P. L. 426.

CHAPTER XVII.

PUBLIC BUILDINGS.

ARTICLE II.

IN TOWNSHIPS OF THE SECOND CLASS.

Section 1250. The board of supervisors of townships of the second class may, after obtaining the assent of the electors of the township, expressed by vote at an election to be held at the place, time, and under the same regulations as provided for the holding of municipal elections, build and maintain a suitable place for the purpose of incarcerating criminals, disorderly, suspicious, and intoxicated persons, until they can be dealt with according to law. The ballots to be deposited by the electors shall be prepared in conformity with the general election law. In receiving and counting and in making returns of the votes cast the inspectors, judges, and clerks of said election shall be governed by the laws regulating municipal elections, and the vote shall be counted by the court as provided by the general law governing municipal election. The board of supervisors shall direct the constable of the township to issue a proclamation, ten days prior to the date of the municipal election, that the qualified electors will vote "for or against building a lockup." Such building, when erected, shall be under the care of the board of supervisors.

Drafted from Sec. 1, Act of May 11, 1901, P. L. 169. In view of the opinion in *McLaughlin v. Summit Hill Borough*, 224 Pa. 425, it is probable that the form of ballot should now be as provided by Sec. 4, Act of June 10, 1893, P. L. 419, as amended by the Act of April 29, 1903, P. L. 338. For this reason it was herein provided that the ballot shall comply with the general law.

CHAPTER XVIII.

LICENSES AND LICENSE FEES.

For other provisions relating to this subject, see appendix
Secs. 2105 to 2112, inclusive.

ARTICLE I.

GENERAL PROVISIONS.

(a) Transient Merchants.

Section 1260. It shall be unlawful for any person, copartnership, or corporation, without a license, to conduct any business, in any township of the first or second class, the whole or greater part of which shall consist of the sale of goods which are represented or advertised to be the goods of the estate of any bankrupt, or the goods of any assignee, or a person, firm, or corporation about to go out of business, or goods that have been damaged in any way.

Drafted from Sec. 1, Act of May 2, 1899, P. L. 159, and Sec. 1, Act of May 20, 1913, P. L. 227.

Section 1261. The provisions of the preceding section of this article shall not prohibit the sale of any goods by any assignee, trustee, receiver, or other officer appointed by any court of this Commonwealth or of the United States, acting for the estate of any such bankrupt or other person, firm, or corporation, within the limits of any township of the first or second class, wherein such person, firm or corporation conducted business or had the goods immediately before the appointment of such assignee, trustee, receiver, or other officer; or the sale of any damaged goods, if the same are sold within the limits of the township wherein the owner conducted business or had such goods at the time the same became damaged.

Drafted from Sec. 1, Act of May 2, 1899, P. L. 159, and Sec. 1, Act of May 20, 1913, P. L. 227.

Section 1262. The license provided for in section twelve hundred and sixty of this act shall be issued by the treasurer of the township wherein such business is conducted. The license fee shall be twenty-five dollars for each calendar month or fraction thereof, and shall be for the use of the school fund of the township. The license shall be renewed monthly during the time such person, firm, or cor-

poration shall conduct such business, and shall be in addition to all other license fees and taxes imposed by the Commonwealth and the township.

Drafted from Sec. 1, Act of May 2, 1899, P. L. 159, and Sec. 2, Act of May 20, 1913, P. L. 227.

Section 1263. Any person, association, copartnership, or corporation violating any of the provisions of sections twelve hundred and sixty, twelve hundred and sixty-one, and twelve hundred and sixty-two of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay, for each day such business is conducted without a license, a fine of not more than two hundred dollars.

Drafted from Sec. 1, Act of May 2, 1899, P. L. 159, and Sec. 3, Act of May 20, 1913, P. L. 227.

(b) Restrictions.

Section 1270. It shall be unlawful for any township of the first or second class to levy any license fee or merchantile tax upon any persons taking orders for merchandise, by sample, from dealers or merchants, for individuals or companies who pay a license or merchantile tax at their chief places of business. Nothing in this section shall authorize any person to sell by retail to others than dealers or merchants.

Drafted from Sec. 1, Act of May 17, 1883, P. L. 31.

Section 1271. It shall be unlawful for any township of the first or second class to impose or collect any license fee upon insurance companies or their agents, or insurance brokers, authorized to transact business under an act approved the first day of June, nineteen hundred and eleven (page six hundred and seven), entitled "An act to establish an Insurance Department; authorizing the appointment of an Insurance Commissioner, and prescribing his powers and duties; also providing for the licensing, examination, regulation, and dissolution of insurance and surety companies and associations, and for the licensing and regulation of insurance agents and insurance brokers; also providing for the collection of fees, and prescribing penalties for the violation of any of the provisions of this act; and repealing all existing acts."

Drafted from Sec. 1, Act of May 3, 1915, P. L. 217.

CHAPTER XVIII.

LICENSES AND LICENSE FEES.

ARTICLE II.

IN TOWNSHIPS OF THE FIRST CLASS.

Section 1280. The board of township commissioners of townships of the first class may enact ordinances requiring licenses to be taken out annually for all stages, hacks, carriages, and other vehicles used for carrying persons or property for hire within the township, and fixing a reasonable annual charge for such licenses.

Nothing in this section shall be construed to repeal or modify any of the provisions of the Public Service Company Law.

Drafted from Sec. 1, Act of April 11, 1903, P. L. 164.

Section 1281. The said ordinances shall be enforced as other township ordinances, and the ordinance in each case shall specify the manner in which the license charges are to be collected.

Drafted from Sec. 2, Act of April 11, 1903, P. L. 164.

CHAPTER XIX

PARKS, SHADE-TREES AND FORESTS IN TOWNSHIPS OF THE
FIRST CLASS.

ARTICLE I.

PARKS AND PLAYGROUNDS.

For other provisions relating to this subject, see appendix, Secs. 2041 to 2051, inclusive.

Section 1295. Townships of the first class may improve, maintain, and regulate public parks, parkways, and playgrounds within the township limits.

Drafted from Sec. 3, Act of May 3, 1909, P. L. 401.

Section 1296. Townships of the first class may enter upon, appropriate, and acquire, by gift, devise, purchase, lease, or otherwise, private property, for the purpose of making, enlarging, and maintaining public parks, parkways, and playgrounds. The provisions of this section shall not authorize the appropriation of private property outside the township limits, nor the appropriation of any property belonging to or used as a cemetery or place of public worship, or any public or parochial school, or other educational or charitable institution or seminary.

Drafted from Sec. 1, Act of May 3, 1909, P. L. 401, as amended by Sec. 1, Act of May 20, 1913, P. L. 257.

Section 1297. No appropriation, purchase, or lease shall be made, pursuant to the preceding sections of this article, whereby any township of the first class shall, within any period of three years, obligate itself to pay, in the aggregate, any sum exceeding one and one-half mills on the dollar on the assessed valuation of all property, offices, professions, and persons in the township, without the consent of a majority of the electors obtained as hereinafter provided.

Drafted from Sec. 1, Act of May 3, 1909, P. L. 401, as amended by Sec. 1, Act of May 20, 1913, P. L. 257.

Section 1298. Whenever any township of the first class, shall, by ordinance, provide for the appropriation, purchase, or leasing of private property, for the purposes aforesaid, and the value of such property or the rental thereof shall, alone or when added to the amount of liability incurred for any of the purposes aforesaid within the preceding three years, exceed one and one-half mills on the dollar

of valuation, as provided in the preceeding section, the township commissioners shall cause the question of such appropriation, purchase, or leasing to be submitted to the electors of the township at the municipal or general election next occurring after the expiration of forty days from the date of such ordinance.

Drafted from Sec. 2, Act of May 3, 1909, P. L. 401. The limitation of three thousand dollars was changed to one and one-half mills on the valuation to correspond to the amendment of Sec. 1, by the Act of May 20, 1913, P. L. 257.

Section 1299. The townships commissioners shall give notice of the proposed submission of such question by weekly advertisements, in not more than three newspapers published in the township, for a period of four weeks immediately preceding the day of election, and, if no newspapers are published therein, by twenty printed handbills posted in conspicuous places at least twenty-one days prior to such election.

Drafted from Sec. 2, Act of May 3, 1909, P. L. 401.

Section 1300. For the purpose of having such question appear upon the ballot, the township commissioners shall certify the question to the county commissioners at least twenty-one days before the day of the election. The question may be stated substantially as follows:

Shall the township of.....acquire by purchase or condemnation, or both, at a price not exceeding.....dollars (or by lease for not more than years, at an annual rental of not more than.....dollars), property for the purpose of making (or of enlarging) public parks, parkways, and playgrounds within the locality bounded by.....

The council may, at their discretion, omit the designation of the locality.

Drafted from Sec. 2, Act of May 3, 1909, P. L. 401.

Section 1301. The result of the vote on such question shall be ascertained and certified in the same manner as the vote on the election of officers named on the same ballots. No such question, determined negatively by the voters, shall be again submitted until one municipal or general election shall intervene.

Drafted from Sec. 2, Act of May 3, 1909, P. L. 401.

Section 1302. The appropriation of private property for the purpose of making, enlarging, and maintaining public parks, parkways, and playgrounds is declared to be the taking of private property for public use, and for all damage suffered by the owners of any property so taken the funds of the township raised by taxation shall be pledged as security.

Drafted from Sec. 4, Act of May 3, 1909, P. L. 401.

Section 1303. Whenever compensation for the damages arising from such appropriation cannot be agreed upon, the township of the first class may tender its bond, as security to the party claiming or entitled to any damages, or to the attorney or agent of any person absent, or to the agent or other officer of a corporation, or to the guardian or committee of any person under legal incapacity. The condition of such bond shall be, that the township shall cause to be paid such amount of damages as the party shall be entitled to receive, after the same have been agreed upon or assessed.

Drafted from Sec. 2, Act of June 8, 1895, P. L. 188.

Section 1304. Whenever any party, claiming damages for property taken under the provisions of the preceding sections of this article, refuses or neglects to accept the security so tendered, the township of the first class may, upon ten days' written notice given to the party, his agent, attorney, guardian, or committee, present its bond to the court of common pleas. If approved, the bond shall be filed for the benefit of those interested, and recovery may be had thereon, for the amount of damages ascertained or finally determined, if the same be not paid, by an execution on the judgment in the issue formed to try the question. Upon the approval of such security, the township may enter into possession, hold, and use such land for such purposes.

Drafted from Sec. 2, Act of June 8, 1895, P. L. 188.

Section 1305. Whenever any township of the first class appropriates private property under the provisions of this article, and is unable to agree with the owners or lessees for the amount of compensation, or whenever, by reason of the absence or legal incapacity of any owner or lessee, no such compensation can be agreed upon, the court of common pleas, or any law judge thereof in vacation, on application thereto by the township or any person interested, shall appoint three viewers from the county board of viewers, and shall designate a time, not less than twenty nor more than thirty days thereafter, when the viewers shall meet upon the property and view the same.

Drafted from Sec. 5, Act of May 3, 1909, P. L. 401.

Section 1306. The viewers may be appointed before or at any time after the entry upon, taking, or appropriation of any property.

The powers and duties of the viewers may be exercised and performed by any two of them. They shall have power to administer oaths, and to adjourn their hearings from day to day, as they find necessary. The notices required to be given by the viewers may be served by any one authorized by them to make such service.

Drafted from Sec. 11, Act of May 3, 1909, P. L. 401.

Section 1307. The viewers shall give ten days' notice of the time and place of their first meeting, to the owners of the property, their agents, attorneys, or representatives, by writing served, if they reside within the county, in the same manner as the service of summons in personal actions; otherwise, by handbills posted upon the premises, or by such other notice as the court may prescribe.

Drafted from Sec. 5, Act of May 3, 1909, P. L. 401. The words "their agents, attorneys, or representatives" was added as new matter.

Section 1308. The viewers, having been sworn or affirmed faithfully, justly, and impartially to decide and true report to make concerning all matters to be submitted to them in relation to which they are authorized to inquire, and having viewed the premises or examined the property, shall hear all parties interested and their witnesses, and, having due regard to the advantages and disadvantages, shall estimate and determine the damages for property taken, used, or appropriated, and to whom the same are payable.

Drafted from Sec. 6, Act of May 3, 1909, P. L. 401.

Section 1309. Having so estimated and determined the damages, the viewers shall prepare a schedule thereof, and give notice, in the manner provided in section thirteen hundred and seven of this act, to the parties interested, of a time, not less than ten days thereafter, and of a place where they will meet and exhibit such schedule, and hear all exceptions thereto and evidence. After making whatever changes are necessary, the viewers shall report to the court showing the damages allowed, if any, and to whom payable. They shall file with such report a plan showing the properties taken, used, and appropriated.

Drafted from Sec. 6, Act of May 3, 1909, P. L. 401.

Section 1310. When such report is first filed in court the prothonotary shall mark the same confirmed nisi, and, in case no exceptions are filed thereto and no appeal to a jury is taken within thirty days, he shall enter a decree as of course that the report is confirmed absolutely.

If exceptions are filed which affect the entire report, it shall not be confirmed absolutely as to any part thereof until the exceptions have been finally disposed of by the court. When exceptions are filed that only go to or affect some particular assessment of damages, and which in the consideration and final disposal thereof will not affect the assessments made in favor of other parties, and when any appeal or appeals may have been taken to the court of common pleas, with demand for trial by jury, by less than all of the parties having a

right to take such appeals, the court may confirm all assessments to which no exceptions have been filed or appeal taken.

Drafted from Sec. 8, Act of May 3, 1909, P. L. 401.

See also Act of May 10, 1921, P. L. 428, Sec. 1743.

Section 1311. When such report is filed, notice thereof shall be given within ten days, by publication once in a newspaper published in the county-seat of the county. Such notice shall state the date of filing the report and shall contain a schedule of the damages shown therein. It shall further state that, unless exceptions are filed or an appeal to a jury taken within thirty days from the date of filing, the report will be confirmed absolutely.

Drafted from Sec. 7, Act of May 3, 1909, P. L. 401, with the addition of "an appeal to a jury" inserted in the last sentence.

Section 1312. Upon the report of the viewers being filed in court, any party may, within thirty days thereafter, file exceptions thereto. The court may confirm the report, or modify, change, or otherwise correct it, or refer it back to the same or new viewers, with like power as to their report.

Drafted from Sec. 8, Act of May 3, 1901, P. L. 401.

Section 1313. Within thirty days from the filing of any report in court, any party whose property is so taken, used, or appropriated may appeal to the court of common pleas and demand a trial by jury. In case the party appellant does not obtain a verdict more favorable than the final report of viewers he shall not recover any costs on the appeal.

Drafted from Sec. 9, Act of May 3, 1909, P. L. 401.

See also Act of May 10, 1921, P. L. 428, Sec. 1743.

Section 1314. From such confirmation of the viewers' report, and from final judgment on the verdict in the case of a trial by jury, either party may have an appeal to the Superior Court or Supreme Court.

Drafted from Sec. 10, Act of May 3, 1909, P. L. 401.

Section 1315. The court of common pleas may order what notices shall be given in connection with any part of said proceedings and make all orders it deems requisite, and may, by rule or otherwise, prescribe the form of the pleadings.

The costs incurred in the proceedings shall be defrayed by the township.

Drafted from Sec. 11, Act of May 3, 1909, P. L. 401.

Section 1316. The final confirmation of the report of viewers shall operate as a judgment against the township, in favor of the party to whom damages have been awarded by the report, or by so much of the report as is confirmed. Interest is allowed on such judgment from the date of filing the report.

Drafted from Sec. 10, Act of May 3, 1909, P. L. 401.

Section 1317. Whenever any township of the first class repeals any ordinance or discontinues any proceeding taken providing for the appropriation of property under this article, prior to the entry upon or injury to such property, and within thirty days after the filing of the report of viewers assessing damages, the township shall not thereafter be liable to pay any damages which have been or might have been assessed; but the cost upon any proceeding had thereon shall be paid by the township, together with the actual damage sustained by reason of such proceeding.

Drafted from Sec. 12, Act of May 3, 1909, P. L. 401.

CHAPTER XIX.

PARKS, SHADE-TREES AND FORESTS IN TOWNSHIPS OF THE
FIRST CLASS.

ARTICLE II.

SHADE-TREE COMMISSION.

Section 1330. Townships of the first class may establish a commission to be known as the Shade-Tree Commission of such township.

Drafted from Sec. 1, Act of May 31, 1907, P. L. 349.

Section 1331. The commission shall be composed of three freeholders of the township of the first class, who shall be appointed by the township commissioners and shall serve without compensation.

Whenever a shade-tree commission is established by any township of the first class, the township commissioners shall appoint three freeholders—one for a term of three years, one for a term of four years, and one for a term of five years.

On the expiration of the term of any shade-tree commissioner, a successor shall be appointed by the township commissioners, to serve for a term of five years.

Vacancies in the office of shade-tree commissioner shall be filled by the township commissioners, for the unexpired term.

Drafted from Secs. 1 and 2, Act of May 31, 1907, P. L. 349.

Section 1332. Whenever, in any township of the first class, there exists a commission for the care of public parks, the township commissioners may, by a majority vote, accept the provisions of this article so far as it relates to the subject of the shade-tree commission, and thereafter the park commission shall have all the powers and be subject to all the duties prescribed by this article for the shade-tree commission.

Drafted from Sec. 1, Act of May 31, 1907, P. L. 349.

Section 1333. The commission shall have exclusive custody and control of the shade-trees in the township of the first class, and is authorized to plant, remove, maintain, and protect shade-trees on the public highways in the township.

Drafted from Sec. 1, Act of May 31, 1907, P. L. 349.

Section 1334. The commission may employ and pay such superintendents, engineers, foresters, tree-wardens, or other assistants, as the proper performance of the duties developing upon it shall require,

and may make, publish and enforce regulations for the care and protection of the shade-trees of the township of the first class. No such regulation shall be in force until it has been approved by the township commissioners and until it has been published at least twice in one or two newspapers of the township.

Drafted from Sec. 6, Act of May 31, 1907, P. L. 349.

Section 1335. The shade-tree commission shall annually report in full to the township commissioners its transactions and expenses for the last fiscal year of the township of the first class. The park commission, in townships accepting this article, may incorporate such transactions and expenses in its regular report to the township commissioners.

Drafted from Sec. 2, Act of May 31, 1907, P. L. 349.

Section 1336. Whenever any shade-tree commission or park commission, in townships of the first class accepting this article, proposes to plant, transplant, or remove shade-trees on any highway, notice of the time and place of meeting at which such work is to be considered shall be given in one or more newspapers published in the township, once a week for two weeks, immediately preceding the time of the meeting. The notice shall specify in detail the highways, or portions thereof, upon which trees are proposed to be so planted, replanted, or removed.

Drafted from Sec. 3, Act of May 31, 1907, P. L. 349.

Section 1337. The cost of planting, transplanting, or removing any shade-trees in the highways of the township of the first class, of the necessary and suitable guards, curbing, or grading for the protection thereof, and of the replacing of any pavement or sidewalk necessarily disturbed in the execution of such work, shall be paid by the owner of the real estate in front of whose property the work is done.

The amount each freeholder is to pay shall be ascertained and certified by the commission to the township commissioners and to the township treasurer.

Drafted from Sec. 4, Act of May 31, 1907, P. L. 349.

Section 1338. Upon the filing of the certificate with the township commissioners, the township secretary shall cause thirty days' written notice to be given to the persons against whose property an assessment has been made. The notice shall state the amount of the assessment and the time and place of payment, and shall be accompanied by a copy of the certificate.

The amount assessed against the real estate shall be a lien from the time of the filing of the certificate with the township commis-

sioners, and, if not paid within the time designated in the notice, a claim may be filed and collected by the township, in the same manner as municipal claims are filed and collected.

Drafted from Sec. 4, Act of May 31, 1907, P. L. 349, with slight variation as to the method of collecting claims.

Section 1339. The cost and expenses of caring for such trees after having been planted, and the expense of publishing the notice provided in the preceding section, shall be paid by the township.

The needed amount shall each year be certified by the shade-tree commissioners to the township commissioners, and shall be drawn against as required by the commission, in the same manner as money appropriated for township purposes.

The township commissioners, instead of levying the tax authorized by section three hundred and ninety-seven of this act, may provide for the expense of caring for trees already planted, and of publishing the notice required by the preceding section, by appropriations equal to the amount certified to be required by the shade-tree commission.

Drafted from Sec. 5, Act of May 31, 1907, P. L. 349.

Section 1340. The commission may assess penalties for the violation of its regulations, and of this article so far as it relates to shade-trees. Any penalty so assessed shall be a lien upon the real estate of the offender, and may be collected as municipal claims are collected.

Drafted from Sec. 6, Act of May 31, 1907, P. L. 349.

Section 1341. All penalties or assessments imposed under this article shall be paid to the township treasurer, to be placed to the credit of the shade-tree commission, subject to be drawn upon by the commission for the purposes of the preceding sections of this article.

Drafted from Sec. 7, Act of May 31, 1907, P. L. 349.

CHAPTER XIX.

PARKS, SHADE-TREES AND FORESTS IN TOWNSHIPS OF THE

FIRST CLASS.

ARTICLE III.

FORESTS.

For other provisions relating to this subject, see appendix
Secs. 2041 to 2051, inclusive.

Section 1355. Townships of the first class may acquire by purchase, gift, or lease, and hold, tracts of land covered with forest or tree growth, or suitable for the growth of trees, and administer the same under the direction of the Commissioner of Forestry, in accordance with the practices and principles of scientific forestry, for the benefit of the township. Such tracts may be of any size suitable for the purpose and may be located within or without the township limits.

Drafted from Sec. 1, Act of April 22, 1909, P. L. 124.

Section 1356. Before the passage of any ordinance for the acquisition of land to be used as township forests, the township commissioners shall submit to the Commissioner of Forestry, and secure his approval, of the area and location of such land.

Drafted from Sec. 1, Act of April 22, 1909, P. L. 124.

Section 1357. Whenever the township commissioners deem it expedient to acquire any lands for forests they shall so declare in an ordinance, wherein shall be set forth all facts and conditions relating to the proposed action, which proposed ordinance shall be advertised once a week for three weeks prior to its passage.

Drafted from Sec. 2, Act of April 22, 1909, P. L. 124.

Section 1358. All money necessary for the purchase of such tracts shall be appropriated in the same manner as appropriations for township purposes, and such funds may be provided from the current revenue, or by the proceeds of a sale of bonds in accordance with existing law.

Drafted from Sec. 2, Act of April 22, 1909, P. L. 124.

Section 1359. Upon the acquisition of any forests or lands suitable for forests, the township commissioners shall notify the Com-

missioner of Forestry, who shall make such rules for the government and proper administration of the same as may be necessary; and the commissioner shall publish such rules, declare the uses of the forest in accordance with the intent of this article, and make such provisions for its administration, maintenance, protection, and development as shall be necessary or expedient. The rules governing the administration of such forests shall have for their main purpose the producing of a continuing township revenue by the sale of forest products.

Drafted from Secs. 3 and 5, Act of April 22, 1909, P. L. 124.

Section 1360. All moneys necessary to be expended for the administration, maintenance, protection, and development of such forests shall be appropriated and applied as is now done for township purposes. All revenue and emoluments arising from such forests shall be paid into the township treasury, to be used for general township purposes.

Drafted from Sec. 4, Act of April 22, 1909, P. L. 124.

Section 1361. Township forests may be used by the public as general outing—or recreation—grounds, subject to the rules governing their administration.

Drafted from Sec. 5, Act of April 22, 1909, P. L. 124.

Section 1362. Whenever the township commissioners deem it expedient to alienate any forest, or part thereof, they shall so declare in an ordinance, wherein shall be set forth all the facts and conditions relating to the proposed action, which proposed ordinance shall be advertised once a week for three weeks prior to its passage. No ordinance shall be effective in legalizing such alienation until it has been approved by a majority vote of the people at the next ensuing election.

Drafted from Sec. 6, Act of April 22, 1909, P. L. 124.

CHAPTER XX.

ENFORCEMENT OF ORDINANCES OF TOWNSHIPS OF THE
FIRST CLASS.

ARTICLE I.

Section 1380. The policemen of townships of the first class may, without warrant and upon view, arrest and commit for hearing all persons guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or violating any ordinances of the township for the violation of which a fine or penalty is imposed. Any person arrested, with or without warrant, shall be entitled to a trial and to give bail for his or her or their appearance, according to the practice in summary convictions.

Drafted from Sec. 1, Act of June 10, 1901, P. L. 551.

Section 1381. All proceedings for the violation of township ordinances, and for the collection of fines and penalties imposed thereby, may be commenced by warrant or by summons, at the discretion of the justice of the peace before whom the proceeding is begun. No warrant shall be issued except upon complaint, on oath or affirmation, specifying the ordinance for the violation of which the same is issued. All proceedings shall be directed to and be served by any policeman or constable of the township, who shall execute the same anywhere within the State as may be provided by law. Warrants shall be returnable forthwith, and, upon such return, like proceedings shall be had in all cases as in summary convictions, with the same right of appeal from any final judgment entered therein, except where otherwise provided by existing laws.

Drafted from Sec. 2, Act of June 10, 1901, P. L. 551.

Section 1382. When any person is arrested on view, a complaint, on oath or affirmation, shall be immediately made, whereupon the like proceedings shall be had as upon a warrant issued.

Drafted from Sec. 2, Act of June 10, 1901, P. L. 551.

Section 1383. All fines or penalties for the violation of township ordinances shall be paid over to the township treasurer.

Drafted from Sec. 2, Act of June 10, 1901, P. L. 551.

Section 1384. Any person arrested for the violation of a township ordinance may be committed to the township lockup pending a hearing or trial. In case there is no suitable lockup or place in which to detain prisoners, the person arrested may be committed to the county jail. Upon judgment against any person by summary conviction or by proceedings by summons, on default of payment of fine or penalty imposed by said judgment and the cost, the defendant may be sentenced and committed to the township lockup for a period not exceeding five days, or to the county jail for a period not exceeding thirty days. No fine or penalty shall exceed one hundred dollars for any single violation of any ordinance. In case the defendant has goods or property of any kind whatsoever, out of which said judgment and costs can be collected by execution, capias, or other process, the plaintiff in the action may elect to proceed to collect the said judgment by such proceedings.

Drafted from Sec. 3, Act of June 10, 1901, P. L. 551.

Section 1385. When a prisoner is committed to any county jail or prison, either for the nonpayment of a fine or penalty imposed for the violation of any ordinance of a township of the first class, or while awaiting a hearing upon any charge for the violation of any ordinance of a township of the first class, the costs of proceedings and the expenses of maintaining such prisoner during his confinement by virtue of any such commitment shall be paid by the township whose ordinances were alleged to have been violated or to which any such fines or penalties are payable. The county shall not be liable to the sheriff for any maintenance or to any officer or person for any costs.

Drafted from Sec. 1, Act of June 7, 1911, P. L. 677.

CHAPTER XXI.

ACTIONS BY AND AGAINST TOWNSHIPS.

For other provisions relating to this subject see appendix
Secs. 2123 to 2130, inclusive.

ARTICLE I.

Section 1395. All suits by a township of the first or second class shall be brought and conducted by the township commissioners or township supervisors. In all suits against a township, process shall be served upon and defense made by the township commissioners or supervisors.

Drafted from Sec. 5, Act of April 15, 1834, P. L. 537.

Section 1396. If judgment shall be obtained against a township of the first or second class in any action or proceeding, the party entitled to the benefit of such judgment, after having complied with the provisions of the act of April twenty-second, one thousand nine hundred and five (Pamphlet Laws, two hundred and ninety-six), entitled "An act requiring plaintiffs in judgments obtained before justices of the peace and aldermen, against boroughs, townships, and school districts, to file in the office of the prothonotary of the proper county certificates giving the particulars of such judgments: directing the prothonotaries to keep a record of such certificates: providing for the payment by such municipalities of the prothonotary's fee for such service: and prohibiting, in case of noncompliance with such provisions, the subsequent filing of any transcript of said judgment in the office of the prothonotary, and the use of the magistrate's record or transcript thereof as evidence to enforce or collect said judgment," may have execution thereof as follows, and not otherwise: viz. The court in which such judgment is obtained, or to which such judgment is removed by transcript from a justice of the peace, may issue thereon a writ commanding the township commissioners or township supervisors, as the case may be, to cause the amount thereof, with the interest and costs, to be paid to the party entitled to the benefit of such judgment, out of any moneys unappropriated of such township; or, if there be no such moneys, out of the first moneys that shall be received for the use of such township, and may enforce obedience to such writ by attachment.

Drafted from Secs. 6 and 7, Act of April 15, 1834, P. L. 537.

Section 1397. Any taxpayer of any township of the first or second class may inquire into the validity of any judgment, upon filing a petition with the court of common pleas of the county in which such suit is pending or judgment exists, accompanied by an affidavit that the taxpayer believes that injustice will be done to the township in such suit or judgment. Whenever it is deemed necessary the court may order such taxpayer to file a bond, with one more sureties, to be approved by court, to save harmless the township from all costs that may accrue in such proceeding subsequent to the filing of such petition.

Drafted from Sec. 1, Act of March 23, 1877, P. L. 20.

Section 1398. Whenever a judgment is rendered by any justice of the peace or alderman against any township of the first or second class, and a right of appeal is given to such township, and for ten days immediately after the rendition of such judgment the township officials neglect to perfect an appeal, any taxpayer of such township may take an appeal, in behalf of the township, from such judgment to the court of common pleas of the county, within the time prescribed for the taking of such appeal.

Drafted from Sec. 1, Act of May 11, 1911, P. L. 208.

Section 1399. In taking the appeal the taxpayers shall make an affidavit that the same is not taken for the purpose of delay, but because he verily believes that injustice has been done. The taxpayer shall pay the costs of the appeal, and enter sufficient bail for the payment of all costs before the justice of the peace or alderman and all costs in the court of common pleas.

Drafted from Sec. 1, Act of May 11, 1911, P. L. 208.

Section 1400. Upon the filing of such appeal in the court of common pleas of the county, the taxpayer shall be made a party to the suit and shall have the right to defend such township therein.

Drafted from Sec. 2, Act of May 11, 1911, P. L. 208.

Section 1401. Townships of the first or second class may proceed for the recovery of municipal claims by lien or by action of assumpsit, and jurisdiction is conferred upon justices of the peace to entertain such actions of assumpsit to the amount of three hundred dollars.

Drafted from Sec. 1, Act of April 4, 1907, P. L. 40, as amended by Sec. 1, Act of March 25, 1909, P. L. 78.

CHAPTER XXII.

ACTS OF THE GENERAL ASSEMBLY REPEALED.

ARTICLE I.

Section 1500. The following acts and parts of acts of Assembly are repealed as respectively indicated. The repeal of the first section of an act shall not repeal the enacting clause of such act.

1803, March	24, P. L.	439, Sec. 1.	Absolutely.
1834, April	15, P. L.	509, Secs. 27, 34, 43.	Absolutely.
1834, April	15, P. L.	509, Secs. 28, 29, 30, 31, 32, 33, 35, 39, 40, 43, 47, 48, 49, 52.	Except in so far as they relate to taxation for poor or county pur- poses.
1834, April	15, P. L.	537, Secs. 7, 13, 14, 81, (Cls. 1, 2, 3, 4, 5,) 83, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106.	Absolutely.
1834, April	15, P. L.	537, Secs. 3, 4, 5.	In so far as they relate to town- ships.
1834, April	15, P. L.	537, Secs. 84, 85, 86, 90, 91, 92, 93.	Except in so far as they relate to constables or as- sistant assessors or overseers of the poor.
1835, February	28, P. L.	45, Secs. 7.	Absolutely.
1836, June	13, P. L.	551, Secs. 6, 10, 27, 28, 29, 30, 31, 32, 33, 61, 62, 63, 64, 66, 67, 68, 69.	Absolutely.
1836, June	13, P. L.	551, Secs. 34, 35, 70, 71, 72, 75.	In so far as they relate to town- ships.
1844, April	19, P. L.	314, Secs. 8, 9.	Absolutely.
1844, May	6, P. L.	564, Sec. 6.	Absolutely.
1849, April	5, P. L.	397, Sec. 1.	In so far as it re- lates to townships of the first class.

1849, April	5, P. L.	555, Sec. 32.	Except in so far as it relates to justices of the peace, constables, overseers of the poor, and assistant assessors.
1850, April	26, P. L.	592, Sec. 5.	Absolutely.
1851, April	14, P. L.	612, Sec. 19.	In so far it relates to townships.
1854, April	26, P. L.	489, No. 489, Sec. 1.	Absolutely.
1855, April	12, P. L.	220, No. 233.	In so far as it relates to township bridges.
1857, March	14, P. L.	93.	Absolutely.
1857, April	24, P. L.	304.	Absolutely.
1857, May	6, P. L.	415.	Absolutely.
1857, May	16, P. L.	535, No. 591.	In so far as it relates to township treasurers.
1860, March	16, P. L.	174, No. 189.	In so far as it relates to road supervisors.
1860, March	29, P. L.	337.	Absolutely.
1861, May	1, P. L.	539, No. 504.	Absolutely.
1864, March	18, P. L.	68, No. 70.	In so far as it relates to township bridges.
1864, March	31, P. L.	162, No. 156.	Except in so far as it relates to poor districts.
1866, April	12, P. L.	109, No. 99, Sec. 1.	In so far as it relates to townships.
1867, March	16, P. L.	37, No. 20.	Absolutely.
1870, April	5, P. L.	48, Sec. 2.	Absolutely.
1871, June	15, P. L.	391.	In so far as it relates to townships.
1874, April	24, P. L.	112, No. 40.	In so far as it relates to the audit of the accounts of supervisors and township treasurers.

1874, May	13, P. L.	438,	In so far as it relates to townships.
1874, June	9, P. L.	282,	In so far as it relates to townships.
1875, March	10, P. L.	6, No. 7.	In so far as it relates to townships.
1876, March	31, P. L.	12, No. 13.	In so far as it relates to the audit of supervisors and township treasurers.
1876, April	28, P. L.	51, Sec. 3.	In so far as it relates to supervisors.
1876, May	1, P. L.	88,	In so far as it relates to townships.
1876, May	8, P. L.	136, No. 103.	In so far as it relates to township lines.
1876, May	18, P. L.	178, Sec. 5.	In so far as it relates to the annexation of townships.
1877, March	23, P. L.	20, No. 16.	In so far as it relates to townships.
1879, May	13, P. L.	52, No. 50.	Absolutely.
1879, June	4, P. L.	94, No. 110.	Absolutely.
1879, June	11, P. L.	126, No. 130.	Absolutely.
1883, May	17, P. L.	31, No. 20.	In so far as it relates to townships.
1885, June	25, P. L.	187, Secs. 1, 2, 3, 7, 9, 11.	In so far as it relates to township taxes.
1887, May	24, P. L.	202, No. 140.	Absolutely.
1887, May	24, P. L.	263, No. 142.	In so far as it relates to townships.
1887, June	1, P. L.	285,	In so far as it relates to townships.
1887, June	2, P. L.	306, No. 197, Sec. 11.	In so far as it relates to townships.

1889, February	14, P. L.	708, Sec. 1.	In so far as it relates to township assessors.
1889, May	4, P. L.	86, No. 82.	In so far as it relates to townships.
1889, May	4, P. L.	86, No. 83.	In so far as it relates to townships.
1889, May	4, P. L.	87, No. 85.	Absolutely.
1889, May	9, P. L.	156, No. 175.	Absolutely.
1889, May	9, P. L.	178, No. 202.	Absolutely.
1893, May	10, P. L.	35.	In so far as it relates to townships.
1893, May	26, P. L.	144.	In so far as it relates to townships.
1893, June	3, P. L.	284.	In so far as it relates to townships.
1893, June	6, P. L.	333, No. 273.	In so far as it relates to township tax collectors.
1893, June	12, P. L.	451.	Absolutely.
1895, June	5, P. L.	284, No. 197.	In so far as it relates to townships.
1895, June	25, P. L.	298, No. 216.	In so far as it relates to townships.
1895, June	26, P. L.	324, No. 242.	Absolutely.
1895, June	26, P. L.	332, No. 247.	In so far as it relates to townships.
1895, July	2, P. L.	426, No. 304.	In so far as it relates to townships.
1895, July	2, P. L.	434, No. 311.	In so far as it relates to township tax collectors.
1897, May	26, P. L.	98.	Absolutely.
1897, June	23, P. L.	194.	Absolutely.
1899, April	28, P. L.	79, Sec. 11.	In so far as it relates to townships.
1899, April	38, P. L.	104.	Absolutely.
1899, May	2, P. L.	159.	In so far as it relates to townships.
1899, May	2, P. L.	164, No. 112.	Absolutely.

1901, March	18, P. L.	51,	Absolutely.
1901, May	11, P. L.	160,	Absolutely.
1901, May	11, P. L.	169, No. 135.	Absolutely.
1901, May	11, P. L.	185.	In so far as it relates to the reports of township auditors.
1901, May	24, P. L.	294,	Absolutely.
1901, May	24, P. L.	200, No. 198.	Absolutely.
1901, June	4, P. L.	359, Sec. 2.	In so far as it confers any powers or imposes any duties on townships.
1901, June	4, P. L.	361, No. 223.	Absolutely.
1901, June	7, P. L.	510,	Absolutely.
1901, June	7, P. L.	531,	In so far as it relates to townships.
1901, June	10, P. L.	551, No. 260.	Absolutely.
1901, June	10, P. L.	555, No. 264.	In so far as it relates to townships.
1901, July	2, P. L.	611,	Absolutely.
1901, July	9, P. L.	627,	Absolutely.
1901, July	10, P. L.	637, No. 322.	In so far as it confers any powers or imposes any duties on townships.
1901, July	17, P. L.	668, No. 338.	In so far as it confers any powers or imposes any duties on townships.
1903, April	11, P. L.	164, No. 122.	Absolutely.
1903, April	15, P. L.	199,	Absolutely.
1903, April	23, P. L.	265, No. 197.	Absolutely.
1903, April	23, P. L.	267, No. 201.	Absolutely.
1905 February	23, P. L.	22.	Absolutely.
1905, March	14, P. L.	36.	Absolutely.

1905, March	21, P. L.	46,	In so far as it relates to townships.
1905, March	28, P. L.	161, No. 42.	In so far as it relates to townships.
1905, April	1, P. L.	97.	Absolutely.
1905, April	12, P. L.	142.	Absolutely.
1905, April	17, P. L.	193,	In so far as it relates to townships.
1905, April	19, P. L.	221, No. 160.	Absolutely.
1905, April	22, P. L.	283, No. 195.	Absolutely.
1905, April	22, P. L.	288.	Absolutely.
1905, April	22, P. L.	295,	In so far as it relates to townships.
1905, May	3, P. L.	379.	In so far as it confers any powers or imposes any duties on townships.
1907, March	22, P. L.	27, No. 23.	Absolutely.
1907, April	4, P. L.	40, No. 36.	In so far as it relates to townships.
1907, April	4, P. L.	44, No. 41.	In so far as it relates to townships.
1907, April	15, P. L.	80.	In so far as it confers any powers or imposes any duties on townships.
1907, May	23, P. L.	225, No. 173.	In so far as it relates to townships.
1907, May	25, P. L.	231, No. 182.	Absolutely.
1907, May	28, P. L.	264,	In so far as it relates to townships.
1907, May	28, P. L.	273, No. 210.	Absolutely.
1907, May	28, P. L.	287, No. 219.	In so far as it relates to townships.
1907, May	29, P. L.	305, No. 230.	Absolutely.
1907, May	31, P. L.	349.	In so far as it relates to townships.

1907, June	7, P. L.	452, No. 303.	In so far as it relates to public roads within townships of the first class.
1907, June	7, P. L.	461, No. 310.	In so far as it relates to townships.
1907, June	8, P. L.	503,	In so far as it relates to townships.
1909, March	15, P. L.	33, No. 15.	In so far as it relates to townships.
1909, March	18, P. L.	40, No. 22.	Absolutely.
1909, March	24, P. L.	56,	Absolutely.
1909, March	25, P. L.	78,	In so far as it relates to townships.
1909, April	1, P. L.	97, No. 57.	Except in so far as it relates to State highways and the officers of the State Highway Department.
1909, April	22, P. L.	117,	Absolutely.
1909, April	22, P. L.	124,	In so far as it relates to townships.
1909, April	23, P. L.	168.	Absolutely.
1909, April	27, P. L.	187.	Absolutely.
1909, April	27, P. L.	198,	Absolutely.
1909, April	27, P. L.	245, Secs. 1 and 2.	In so far as they relate to township tax-collectors.
1909, April	27, P. L.	261,	In so far as it relates to townships.
1909, April	29, P. L.	275, Sec. 1.	Absolutely.
1909, May	1, P. L.	301,	Absolutely.
1909, May	1, P. L.	305,	In so far as it relates to township taxes.
1909, May	1, P. L.	306, No. 198.	In so far as it confers any powers or imposes any duties upon townships.

1909, May	3, P. L.	392,	In so far as it relates to townships.
1909, May	3, P. L.	401,	In so far as it relates to townships.
1909, May	8, P. L.	474,	In so far as it relates to township taxes.
1909, May	13, P. L.	752.	Absolutely.
1911, May	5, P. L.	123,	In so far as it relates to townships.
1911, May	5, P. L.	165,	Absolutely.
1911, May	5, P. L.	168,	In so far as it relates to townships.
1911, May	5, P. L.	170, No. 123.	In so far as it relates to townships.
1911, May	11, P. L.	208, No. 152.	In so far as it relates to townships.
1911, May	12, P. L.	307,	Absolutely.
1911, June	1, P. L.	541, No. 201.	In so far as it confers any powers or imposes any duties on townships.
1911, June	3, P. L.	626,	Absolutely.
1911, June	3, P. L.	628,	Absolutely.
1911, June	3, P. L.	638,	Absolutely.
1911, June	7, P. L.	677. No. 268.	In so far as it relates to townships.
1911, June	9, P. L.	865,	In so far as it relates to townships.
1911, June	14, P. L.	942,	Absolutely.
1911, June	15, P. L.	966,	In so far as it confers any powers or imposes any duties upon townships.
1911, June	15, P. L.	982,	In so far as it relates to township roads.
1911, June	15, P. L.	987.	In so far as it confers any powers or imposes any duties upon townships.

1911, June	19, P. L.	136,	In so far as it relates to townships.
1911, June	19, P. L.	166,	Absolutely.
1911, June	20, P. L.	1087,	In so far as it relates to townships.
1913, April	15, P. L.	66,	In so far as it relates to townships.
1913, May	1, P. L.	144, No. 94.	Absolutely.
1913, May	1, P. L.	155. No. 104.	In so far as it relates to townships.
1913, May	8, P. L.	159,	Absolutely.
1913, May	20, P. L.	227,	In so far as it relates to townships.
1913, May	20, P. L.	248,	Absolutely.
1913, May	20, P. L.	254,	In so far as it relates to the audit of township accounts.
1913, May	20, P. L.	257,	In so far as it relates to townships.
1913, May	20, P. L.	267,	In so far as it confers any powers or imposes any duties on townships.
1913, May	21, P. L.	283,	Absolutely.
1913, May	21, P. L.	284,	In so far as it relates to township taxes.
1913, May	23, P. L.	306,	Absolutely.
1913, May	23, P. L.	348. No. 236.	Absolutely.
1913, May	23, P. L.	353,	Absolutely.
1913, May	28, P. L.	368,	In so far as it relates to townships.
1913, May	28, P. L.	371,	Absolutely.
1913, May	31, P. L.	394,	In so far as it relates to townships.
1913, June	5, P. L.	424,	Absolutely.
1913, June	5, P. L.	445, Sec. 10.	In so far as it relates to townships.
1913, June	19, P. L.	541,	Absolutely.

1913, June	25, P. L.	561, No. 359,	Absolutely.
1913, June	25, P. L.	561, No. 360.	Absolutely.
1913, June	27, P. L.	667,	Absolutely.
1913, July	7, P. L.	671,	Absolutely.
1913, July	22, P. L.	915, Secs. 4, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 20.	Absolutely.
1913, July	22, P. L.	915, Secs. 5, 17, 18, 19, 21. ,	Except in so far as they confer any powers, im- pose any duties or penalties on the State High- way Department, or any of its of- ficers or agents, or on the clerks of the court of quarter sessions.
1915, April	9, P. L.	70,	Absolutely.
1915, April	14, P. L.	122, No. 57.	In so far as it re- lates to townships.
1915, April	21, P. L.	159, No. 83.	In so far as it re- lates to townships.
1915, April	21, P. L.	162, No. 85.	In so far as it re- lates to townships.
1915, May	3, P. L.	217.	In so far as it re- lates to townships.
1915, May	13, P. L.	303.	Absolutely.
1915, May	14, P. L.	489, Sec. 1.	Absolutely.
1915, May	14, P. L.	520,	Absolutely.
1915, June	1, P. L.	681,	Absolutely.
1915, June	3, P. L.	806,	Absolutely.
1915, June	11, P. L.	942.	In so far as it re- lates to townships.
1915, June	11, P. L.	947, No. 418, Sec. 1.	Except in so far as it confers any powers or imposes any duties on the State Highway De- partment.
1915, June	11, P. L.	947, No. 418, Secs. 2 and 3.	Absolutely.

1915, June 15, P. L. 985, No. 426.

In so far as it relates to townships of the first class.

Section 1501. All other acts and parts of acts inconsistent with this act are repealed. This act shall not repeal or modify any of the provisions of the Public Service Company Law, nor the act entitled "An act to preserve the purity of the waters of the State for the protection of the public health," approved the twenty-second day of April, one thousand nine hundred and five. Nor shall this act repeal or modify any of the provisions of any act of Assembly amendatory of law in force at the time of the passage of this act, or otherwise adopted at the session of the General Assembly of one thousand nine hundred and seventeen, whether such acts were adopted prior to the passage of this act; or shall be adopted subsequent to the passage of this act; nor shall this act repeal any such act, or part thereof, in force at the time of the passage of this act, which is amended by any act of Assembly adopted at the Session of the General Assembly of one thousand nine hundred and seventeen.

This section saves the Act of May 17, 1917, P. L. 221, from repeal: *In re Ogile Township Tax Collectors' Bond*, 1 Somer. L. J. 69, s. c. 30 D. R. 141.

APPENDIX.

CHAPTER XXIII.

CONSTITUTIONAL PROVISIONS PROHIBITING LOCAL AND SPECIAL LEGISLATION.

1502. The general assembly shall not pass any local or special law:

Regulating the affairs of * * * * townships: * * * *

Authorizing the laying out, opening, altering or maintaining, roads, highways, streets or alleys:

Vacating roads, town plats, streets or alleys:

Relating to cemeteries, grave yards, or public grounds not of the State:

Erecting new townships, * * * * changing township lines: * * * *

Creating offices, or prescribing the powers and duties of officers in * * * * townships: * * * *

Constitution of Pennsylvania, Part of Art. III, Sec. 7.

CHAPTER XXIV.

CREATION, CONSOLIDATION AND DIVISION OF TOWNSHIPS.

For other provisions relating to this subject, see Secs. 20 to 69, inclusive.

1503. Whenever a final order is granted by any court authorizing the creation of a new city, borough, or township, or authorizing the consolidation of existing cities, boroughs, or townships, or the division or partition of the above-named civil divisions, the prothonotary or clerk of the court, as the case may be, shall furnish a certified copy of such final order to the Secretary of Internal Affairs of the Commonwealth. The prothonotary or clerk of the court shall be allowed a fee of one dollar for his services to be paid as part of the costs of the proceedings.

Sec. 1, Act of May 8, 1919, P. L. 130.

CHAPTER XXV.

OFFICIAL BONDS.

1504. Whenever any person or persons shall apply by petition, verified by affidavit, to the court of common pleas of the county in which any collector of taxes or other public officer may reside who is not commissioned by the Governor of this Commonwealth, from whom by law, security is required for the faithful performance of his official duties, setting forth that the solvency of such public officer, or of any one or more of his official sureties has become impaired or diminished since the execution and approval of the official bond of such officer, or that such officer has become liable for neglect of duty or become of intemperate habits, and that the said officer and his sureties are not worth the amount of the penalty of his said bond, or that said sureties are likely to suffer loss on account of misconduct of such officer, the said court shall have the power to examine into the manner of the performance of said official duties, and the ability and solvency of the sureties of any such officer at any time during his term of office, and to require from him such other additional security for the performance of his official duties as the said court shall deem expedient.

Sec. 1, Act of May 26, 1897, P. L. 108.

1505. Upon the presentation of any such petition, it shall be lawful for said court, or any judge thereof in vacation, to award a citation to such officer and his sureties, commanding them to appear at such times as the court may direct and answer the matters alleged in said petition, and show cause why the said officer should not give other and further security, which citation shall be served at least five days before the return day thereof as is directed by law in regard to citations in the orphans court, and upon the return day of such citation, or at such time as shall be fixed for that purpose, the court shall hear the parties and examine the facts in the case, and if the said court shall be satisfied that the sureties of the said officer are insufficient, or have become liable for neglect of duty of such officer, or are likely to become so from his intemperance or other cause, the said court shall order and direct that he shall, within such time as shall be fixed by said court, enter into a new official bond, with securities to be approved by the court or any judge thereof, in lieu of the former bond, and upon the execution and approval of such bond it shall be recorded or filed in the proper office in like manner as the original bond of such officer, and the sureties therein shall be responsible in the same manner as the sureties in such original bond, who

shall, upon the approval of such new bond, be discharged from all liability for any act or default occurring thereafter; and in case the said officer shall neglect or refuse to comply with the order of said court or judge and give such other security aforesaid, the said court shall make an order removing said delinquent from office and declare said office vacant, and the vacancy in such office shall be filled in the same manner as vacancies occurring by death or resignation are by law filled.

Sec. 2, Act of May 26, 1897, P. L. 108.

1506. In case the said officer or any of his sureties cannot be found in the county so that service of citation can be made upon him or his sureties as required by the second section of this act, upon proof thereof being made at the return day thereof or time fixed for hearing as aforesaid, the court shall proceed to examine the facts in the case, and determine the same as provided in the second section of this act, the same as though personal service of said citation had been made as provided in said section: Provided however, That said citation shall be served on said sureties, or such of them as may be found in the county.

Sec. 3, Act of May 26, 1897, P. L. 108.

1507. Said court in all proceedings under this act may, in their discretion at the request of said officer or his sureties, direct an issue on the facts set forth in said petition, to be tried by a jury without delay, and shall have power to make such decree respecting the payment of costs in said proceedings as may be just and equitable.

Sec. 4, Act of May 26, 1897, P. L. 108.

CHAPTER XXVI.

POLICE.

1508. Upon the petition of not less than twenty-five tax-payers of any township of the second class to the court of quarter sessions, representing that the safety of the citizens and the security of property makes it necessary for the appointment of one or more electors to act as policeman, the court shall consider said petition, and, if satisfied of the reasonableness and propriety of said application, shall authorize the supervisors of said township to appoint one or more qualified electors to act as policemen, and to serve at the will of said supervisors.

Sec. 1, Act of April 5, 1917, P. L. 47.

See section 355 and notes thereunder for power of court to make appointments of policemen.

1509. The court shall fix the number of policemen necessary, the maximum compensation of such policemen, and shall limit the term of service of said policemen as it may deem proper.

Sec. 2, Act of April 5, 1917, P. L. 47.

1510. Each policeman so appointed shall possess and exercise all the powers of policemen of cities of this Commonwealth.

Sec. 3, Act of April 5, 1917, P. L. 47.

1511. The keepers or persons in charge of jails, lockups, or station-houses shall receive all persons arrested by such policemen for the commission of any offense against the laws of this Commonwealth within said township.

Sec. 4, Act of April 5, 1917, P. L. 47.

1512. Each policeman, when on duty, shall wear a shield or badge, with the words "township police," and the name of the township for which he was appointed, inscribed thereon.

Sec. 5, Act of April 5, 1917, P. L. 47.

1513. The said policeman shall be paid, from the funds of said townships, such compensation as may be fixed by the supervisors in accordance with the limitations prescribed by this act.

Sec. 6, Act of April 5, 1917, P. L. 47.

1514. From and after the passage of this act all municipalities or corporations, employing policemen within the Commonwealth of Pennsylvania, shall pay to all such policemen a fixed or stipulated

salary; and that hereafter it shall not be lawful for any such policeman to charge or accept any fee or other compensation, in addition to his salary, for any service rendered or performed by him of any kind or nature whatsoever pertaining to his office or duties as a policeman, except public rewards and the legal mileage allowed for traveling expenses

Sec. 1, Act of July 14, 1897, P. L. 266.

This act does not offend against the constitutional prohibition providing that the general assembly shall not pass any local or special law regulating the fees or extending the powers and duties of constables. *Weaver v. Schuylkill Co.*, 17 Super. Ct. 327, affirming 23 Pa. C. C. 507, 9 D. R. 467; *McAllister v. Armstrong Co.*, 20 Pa. C. C. 201.

A salaried police officer is entitled to witness fees where he appears in answer to subpoena. In such a case he is not performing a service pertaining to his office or duty as a policeman. *Davis v. Schuylkill Co.*, 27 Pa. C. C. 177; *Templeton v. Williams*, 29 Super. Ct. 352, affirming 24 Montg. 194, 22 York 11.

The service of a subpoena is not a duty pertaining to the office of a policeman, and he is entitled to a fee for such service, and also for executing a writ of commitment. *Com. v. Jones*, 14 D. R. 350, s. c. 3 Just. L. R. 128, 5 Lack. J. 328; *Com. v. McCafferty*, 20 D. R. 29, s. c. 11 Del. 270, 2 M. L. R. 14.

One who is otherwise entitled to the reward provided for by the Act of March 15, 1821, 7 Sm. L. 388, for the apprehension and conviction of a horse thief, is not precluded from receiving it by the fact that he is a policeman. *Com. v. Matthews*, 10 Luz. Rep. 110.

A policeman is entitled to fees for serving subpoenas and attending hearings as a witness, but not for making arrests. *Aliquippa Borough v. Hall*, 21 D. R. 774, s. c. 4 M. L. R. 42.

A salaried policeman in his capacity as such is not entitled to any remuneration for services that he or some other sworn officer only could perform, but when the same services could be performed by any private person, who is capable of performing the service, he, as a private person, can perform the service and is entitled to remuneration. *Com. v. Murphy, et al.*, 7 Just. L. R. 31.

1515. From and after the passage of this act it shall not be lawful for any high, ward, township or other constable, who is at the same time employed as a policeman in any city, borough or other part of this Commonwealth to charge or accept any fee or other compensation, in addition to the salary paid to him as a policeman for any service rendered or performed by him pertaining to his office or duties, either as a policeman or as such high, ward, or other constable, except public rewards and the legal mileage allowed to constables for traveling expenses.

Sec. 2, Act of July 14, 1897, P. L. 266.

The act refers to all constables in the Commonwealth and prohibits them from demanding or receiving fees for service rendered as constable as well as a salary as policeman. *Weaver v. Schuylkill Co.*, 17 Super. Ct. 327 affirming 23 Pa. C. C. 507, 9 D. R. 467; *McAllister v. Armstrong Co.*, 20 Pa. C. C. 201; *McKinney v. York Co.*, 8 Del. Co. 551, s. c. 16 York 121.

1516. Any policeman or constable employed as a policeman as aforesaid violating any of the provisions of the several sections of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not exceeding fifty dollars and costs, or undergo imprisonment in the jail of the proper county not exceeding thirty days, or both at the discretion of the court.

Sec. 3, Act of July 14, 1897, P. L. 266.

1517. Whereas, There exists an urgent need, during the time this Nation is at war, to immediately take steps to organize within this Commonwealth an efficient volunteer police force to prevent injury and destruction to the various industries of the Commonwealth by enemies of the Nation, and to suppress riots and tumults, and to preserve the public peace and safety; therefore:—

Be it enacted, etc., That upon application to the Governor of the Commonwealth, the said Governor is hereby authorized, immediately after the passage of this act, and at any time during the continuance of the present war with Germany, or in any war in which this Nation may become involved, to appoint and commission such number of volunteer police officers, to serve without pay, in the several counties, as may be deemed necessary. In all cities, boroughs and townships where there is a duly constituted police department or police commission, such volunteer police officers shall be under, and subject to, the authority and direction of such department or commission. In all other cases the said Governor shall designate and appoint such officials, or official person or persons, to advise and direct the said police officers and services to be by them performed.

Sec. 1, Act of July 18, 1917, P. L. 1062.

The Governor, if he so desires, may issue one certificate for all the appointees in one county. The Governor has the power to commission such officers either for one year or for any other specific time or "during the continuance of the present war with Germany." *In re Volunteer Police. Opinion by Wm. M. Hargest, Dep. Atty. Gen., 3 Dept. Rep. 3.*

"In every city, borough or township wherein there is a duly constituted police department or commission, it belongs to such department to direct and exercise authority over the volunteer police officers therein. In other cases it belongs to the person named by the Governor for that purpose." *In re Volunteer Police Force. Opinion by Francis Shunk Brown, Atty. Gen., 4 Dept. Rep. 1556.*

1518. All police offices so appointed shall take and subscribe the oath provided by article seven of the Constitution. Such oath shall be administered by an officer duly authorized to administer oaths, and shall be filed, together with the certificate of appointment, in the office of the recorder of deeds.

Sec. 2, Act of July 18, 1917, P. L. 1062.

The certificate of appointment and the oath required to be taken must be filed in the office of the Recorder of Deeds.

No fee is allowed by law for filing said certificate and oath, and, therefore, none can be exacted by the Recorder of Deeds of the various counties. No tax of fifty cents can be imposed by the Recorder of Deeds for filing said certificate and oath: *In re Volunteer Police. Opinion by Wm M. Hargest, Dep. Atty. Gen., 3 Dept. Rep. 3320.*

1519. The police officers, when so appointed and qualified, shall have and possess all the powers of police officers of the several cities, boroughs and townships of the Commonwealth, and are authorized to arrest upon view, with or without warrant, any person apprehended in the commission of any offense against the laws of the Commonwealth or of the United States.

Sec. 3, Act of July 18, 1917, P. L. 1062.

A volunteer police officer can lawfully execute a warrant, duly issued in the county in which he is commissioned, for an offense committed therein, in any county of the State to which the offender may go, in manner as prescribed in the Act of May 2, 1899, P. L. 173. His appointment does not invest such officer with any authority to make an arrest without a warrant outside of the limits of the county in and for which he is commissioner: *In re Volunteer Police Officers. Opinion by Emerson Collins, Dept Atty. Gen., 3 Dept. Rep. 3625.*

While a volunteer policeman can exercise any power which a city, borough or township police officer possesses, as stated in the preceding opinion, it is against the reason and the spirit of the act that he should be called upon to render the ordinary routine service of a regular policeman. He is not to be used for ordinary, but extraordinary work, such as pointed out in the preamble and in Sec. 4 of this act, viz: "to prevent injury and destruction to the various industries of the Commonwealth by enemies of the nation, and to suppress riots and tumults, and to preserve the public peace and safety." It was not intended that through the instrumentality of the volunteer police force the State would thereby relieve municipalities from any part of the duty and burden heretofore resting upon them of policing the same and maintaining the peace. Where a situation exists or impends, endangering or threatening the peace and property of any community, and which is beyond the ability of the regular police force to cope with, the local police department should not hesitate promptly to summon the assistance of volunteer policemen: *In re Volunteer Police Force. Opinion by Francis Shunk Brown, Atty. Gen., 4 Dept. Rep. 1556.*

1520. The police officers herein provided for shall be organized and disciplined especially for the purpose of the suppression of riots and tumults, and to preserve the public peace and safety; and shall be used whenever necessary to guard, protect, and preserve from injury and destruction by enemies of the Nation in the present war with Germany, or in any war in which this Nation may become involved, all railroads, railways, mines, oil-wells, chemical plants, light—heat—and power-plants, water-works and plants, iron-works,

steel-plants, ammunition-plants, manufacturing plants, and all other industries, as well as all public works and public buildings.

Sec. 4, Act of July 18, 1917, P. L. 1062.

See notes to Sec. 1519.

CHAPTER XXVII.

EMPLOYEES ENTERING MILITARY SERVICE OF THE UNITED STATES.

1521. Whenever any appointive officer or employe, regularly employed by the Commonwealth of Pennsylvania in its civil service, or by any department, bureau, commission, or office thereof, or by any county, municipality, township, or school district within the Commonwealth, shall, in time of war or contemplated war enlist, enroll, or be drafted in the military or naval service of the United States, or any branch or unit thereof, he shall not be deemed or held to have thereby resigned from or abandoned his said office or employment, nor shall he be removable therefrom during the period of his service, but the duties of his said office or employment, shall if there is no person authorized by law to perform the powers and duties of such officer or employe during said period, be performed by a substitute, who shall be appointed by the same authority who appointed such officer or employe, if such authority shall deem the employment of such substitute necessary. Such substitute shall receive so much of the salary or wages attached to said office or employment as shall not be paid to the dependent or dependents of said officer or employe, as hereinafter provided, and such substitute may receive such further compensation from appropriations made for that purpose or otherwise, as may be required, when added to the amount received under the provisions of this act, to constitute a reasonable compensation for his services, in the opinion of the authority appointing him.

Sec. 1, Act of June 7, 1917, P. L. 600.

A State employe who enlisted in the United States Military Service and resigned, finally severing his employment with the State, previous to the approval of this act, would not come within its provisions. On the other hand, if he was away on leave of absence, or other temporary arrangement, he would come within its provisions: *In re payments to dependents of enlisted State employes. Opinion by Wm. H. Keller, First Dep. Atty. Gen., 3 Dept Rep. 2983.*

This act does not apply to State officers and employes enlisting in the National Guard of Pennsylvania until this branch is mustered into the United States service. *In re payments to dependents of enlisted State employes, Opinion by Wm. H. Keller, First Dep. Atty. Gen., 3 Dept. Rep. 2190.*

The act applies to all employes of the State, without regard to rank, and without regard to the rank in which they enter the army or navy service: *In re payment to dependents of enlisted State Employees, Opinion by Wm. M. Hargest, Dep. Atty. Gen., 3 Dept. Rep. 2313.*

The act does not apply to the employes of the penitentiaries, reformatories, or other institutions similarly operated by the Commonwealth: *In re State Officers and Employes. Opinion by Emerson Collins, Dep. Atty. Gen., 3 Dept. Rep. 3405.*

One entering an Officers Training Camp is entitled to the benefit of this act: *In re payments to dependents of State Employees, Opinion by Emerson Collins, Dep. Atty. Gen., 3 Dept. Rep. 3441.*

One who was regularly employed in good faith in the service of the Commonwealth, and subsequently enlisted, enrolled or was drafted into the military or naval service of the United States, is entitled to the benefits of this act, even though his employment began after the passage of the act: *In re payments to dependents of enlisted employes, Opinion by Wm. M. Hargest, Dep. Atty. Gen., 4 Dep. Rep. 425.*

Since this act applies only to appointive officers or employes, regularly employed by the State in its civil service, and this latter term includes all officers and positions of trust or employment in the service of the State, or of any political or civil division thereof or city, except such offices and positions in the naval or military departments one who is employed in the military department of the State and who moreover, is only an extra employe, is not entitled to the benefits of the act. *In re payments to dependents of enlisted State employes, Opinion by Wm. M. Hargest, Dep. Atty. Gen., 3 Dept. Rep. 2949.*

1522. Any said officer or employe, so enlisting, enrolling, or drafted, and having a dependent or dependents as aforesaid, may, at the time of his enlistment, enrollment, or draft, or immediately thereafter, file with the head or chief of the department, bureau, commission, or office in which he is employed, a statement in writing, executed under oath, setting forth the fact and date of his enlistment, enrollment or draft, his intention to retain his said office or employment, and to resume the duties thereof after the expiration of his service in the military or naval service, or any branch or unit thereof; and the names and addresses of his wife, children, and dependent parent or parents, if any such he have; and requesting and directing that one-half of the salary or wages of his said office or employment, not exceeding two thousand (\$2,000.00) dollars per annum, shall be paid during his service in the military or naval service or any branch or unit thereof as follows: If he have a wife, to his wife, for her use and that of his children; if he have any children and no wife, then to such person as he may designate for the use and benefit of his children. If he have a dependent parent or parents, then he shall direct such sum as he has theretofore been accustomed to contribute to their support to be paid to them and the amount payable to his wife, or children, if any he have, shall be proportionately decreased. If he have no wife or children he may direct the entire one-half of his salary or wages, not exceeding two thousand (\$2,000.00) dollars per an-

num, to be paid to his dependent parent or parents if any such he have; all sums so directed to be paid shall be paid to the person designated, in the same proportional installments, as nearly as may be, as the salary or wages of such person were theretofore paid to him. With such statement he shall also file powers of attorney, authorizing the proper dependents to receive their proportion of said salary or wages as aforesaid.

Sec. 2, Act of June 7, 1917, P. L. 600.

The payments will not be paid to the party enlisting but to his wife, children or dependent parents. *In re payments to dependents of enlisted State Employees, Opinion by William M. Hargest, Dep. Atty. Gen., 3 Dept. Rep. 2313.*

Where a wife, child, or parent, has no means of support other than such as may be provided by the one so entering such service, the case is within the scope of this act. It does not apply where the nominated dependents have independent means of their own ample and adequate to maintain them suitably without aid or assistance from others. Only those who are actually dependent upon those temporarily leaving the civil service of the State or a county, municipality, township, or school district to enter the military or naval service of the United States are within the intendments of the act as beneficiaries thereof. That the salary or pay of one entering the service may be larger than what he has previously received from the State would not, of itself, defeat payment to his dependents: *In re payments to dependents of enlisted State Employees, Opinion by Emerson Collins, Dep. Atty. Gen., 3 Dept. Rep. 3237.*

Under the provisions of the section the full one-half of the wages of such officers or employes enlisted in the United States service shall be paid to his dependent parents, in case there are no children. When there are children, then such sum as the enlisting employe had theretofore been accustomed to contribute to the support of his dependent parents shall be paid to them, and the amount payable to his wife or children shall be proportionately decreased: *In re payments to dependents of enlisted State Employees, Opinion by Wm. H. Keller, First Dep. Atty. Gen., 3 Dept. Rep. 2190.*

An employe, eligible to the benefit of this act, acquires for his dependents the benefit of this act only from the date from which he makes formal claim, in accordance with the provisions of the act. The act is not retroactively cumulative and does not therefore carry with it back pay for the time that elapsed between the passage of the act and the filing of the State employe's claim and affidavit: *In re payments to dependents of enlisted State Employees, Opinion by Wm. H. Keller, First Dep. Atty. Gen., 3 Dept. Rep. 2983.*

1523. The statement required to be filed by section two of this act shall be prima facie evidence of the dependency of any person named as a dependent in said statement; but the head of any department, bureau, commission, or office may, in case of doubt, satisfy himself as to the fact of such dependency, and if the person so nominated as a dependent was not, in fact, dependent upon the officer or employe enlisting, enrolling or drafted in the military or naval service or any branch or unit thereof, at the time of his enlistment, enrollment or draft, shall refuse to make any payment to such person on account of

the salary or wages of such officer or employe. Such head of a department, bureau, commission, or office shall also satisfy himself, before making payments to dependents under the provisions of this act, that the officer or employe was alive during the period for which any payment is made. No payment shall be made under the provisions of this act to any officer or employe enlisting, enrolling, or drafted, as aforesaid, and so much of the salary or wages of such officer or employe as is not paid, under the provisions of this act, to his dependents and his substitute, shall be recovered back into the fund from which said salary or wages is paid.

Sec. 3, Act of June 7, 1917, P. L. 600.

The head of any given department, bureau, commission, or office is vested with the power and duty of finding the fact of dependency in all doubtful cases and making payment or not as dependency may be determined: *In re payments to dependents of enlisted State Employes, Opinions by Emerson Collins, Dep. Atty. Gen., 3 Dept. Rep. 3237. Also, In re payments to dependents of State Employes, Opinion by Emerson Collins, Dep. Atty. Gen., 3 Dept. Rep. 3441.*

CHAPTER XXVIII.

STATE ASSOCIATION OF TOWNSHIP SUPERVISORS AND COMMISSIONERS.

For provisions relating to county associations of township supervisors and commissioners, see sections 195 to 198, inclusive.

1524. The formation of a State association of township supervisors is hereby authorized. The association shall hold annual meetings, at such time and place within the Commonwealth as it may designate, for the purpose of discussing various questions and subjects pertaining to the duties of township supervisors and township commissioners, and for the purpose of devising uniform, economical, and efficient methods of administering the affairs of townships.

Sec. 1, Act of May 5, 1921, P. L. 397.

1525. Each county association of township supervisors and commissioners shall send one township supervisor or commissioner for each ten townships, or fraction thereof, within said county, as a delegate to each annual meeting of said State association.

Sec. 2, Act of May 5, 1921, P. L. 397.

1526. The expenses of the delegate attending the annual meeting shall not exceed four dollars per day for each delegate for not more than three days, together with the actual mileage at the prevailing

rate of railroad fare, and shall be paid by the respective county associations.

Sec. 3, Act of May 5, 1921, P. L. 397.

1527. The expenses of the annual meeting, including expenses of committees, printing, and stenographers, shall be paid pro rata by the respective county associations, and shall not exceed ten dollars for each county association.

Sec. 4, Act of May 5, 1921, P. L. 397.

1528. Within thirty days after each annual meeting of the State association, the treasurer of the respective county association shall file, with the county treasurer, an itemized statement, under oath, setting forth where and when the annual meeting of the State association was held, the number of delegates from the respective association in attendance, and the expenditures due from the county association for each annual meeting.

Sec. 5, Act of May 5, 1921, P. L. 397.

1529. The county treasurer shall pay to the treasurer of the respective county association, out of the county funds, the amount expended by the county association under the provisions of this act.

Sec. 6, Act of May 5, 1921, P. L. 397.

CHAPTER XXIX.

INCOMPATIBLE OFFICES.

1530. No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this State to which a salary, fees or perquisites shall be attached. The General Assembly may by law declare what officers are incompatible.

Constitution of Pennsylvania, Sec. 2, Art. XII.

The prohibition contained in the first sentence of this section is operative and may be enforced without legislative aid: *DeTurk v. Commonwealth*, 129 Pa. 151.

The last sentence of the section relates to offices not within the constitutional prohibition, and authorizes the legislature to declare them incompatible: *Commonwealth v. Ford*, 5 Pa. 67; *DeTurk v. Commonwealth*, 129 Pa. 151.

1531. Nothing in this act, or in the act to which this is a supplement, contained, shall be construed to prohibit a judge, inspector,

or clerk of election from being voted for to fill any township office, or render either or any of them ineligible to hold the same.

Part of Sec. 2, Act of June 13, 1840, P. L. 683.

The office of township supervisor is a civil office within the meaning of section 15, article 8, of the constitution, and an election officer is ineligible to the office if filled at the election at which he served. Section 2 of the act of June 13, 1840, P. L. 683, is inconsistent with the provisions of the said section of the constitution and is repealed thereby: *Comm. v. Edwards*, 24 D. R. 729, s. c. 13 Del. 28; *Comm. v. McCormick*, 36 Pa. C. C. 253, s. c. 18 D. R. 641.

This section was not repealed by the constitution of 1874, and an election officer in a township may be elected as school director at an election which he assists in holding: *Comm. v. McCorkle*, 64 P. L. J. 356, s. c. 14 Del. 112; 30 York 24; 26 D. R. 135.

This section allows an election officer to hold any township office which is filled at an election at which he serves. A clerk of elections may be elected to the office of township supervisor: *Election of Walker as Supervisor of Carbondale Township*, 3 Luz. 130.

This section is still in force, and an election officer is eligible to the office of supervisor when elected at an election at which he serves: *Comm. v. West*, 19 D. R. 269.

A judge of elections is eligible as a candidate for the office of township collector at the election at which he serves as judge: *McKenzie's Election*, 13 Pa. C. C. 546, s. c. 2 D. R. 518.

1532. Any citizen of this Commonwealth having a good moral character, being twenty-one (21) years of age or upwards, and having been a resident of the district for at least one (1) year prior to the date of his election or appointment, shall be eligible to the office of school director therein: Provided, That any person holding the office of mayor, chief burgess, county commissioner, district attorney, city, borough, or township treasurer, city councilman, township commissioner, road supervisor, tax-collector, any comptroller, auditor, constable, county superintendent or assistant county superintendent shall not be eligible as a school director in this Commonwealth.

Sec. 207, Act of May 18, 1911, P. L. 309, as amended by Sec. 1, Act of June 20, 1919, P. L. 517.

1533. No justice of the peace, member of council, or other officers, except school directors, constables, or election officers, shall, at the same time, be a member of the board of health of such municipality, or hold any office or appointment under the same.

Sec. 20, Act of June 18, 1895, P. L. 203, as amended by Sec. 1, Act of April 3, 1903, P. L. 138. This section is not repealed by the Act of May 14, 1909, P. L. 855: *Comm. v. Evans*, 59 Super. Ct. 607, affirming 31 Lanc. L. R. 401.

CHAPTER XXX.

TAXATION.

This chapter does not include the numerous provisions of existing law relating to the assessment of property and persons for taxation purposes, or the duty of assessors, or the sale of seated and unseated lands by the county treasurer for non-payment of taxes. The assessments upon which township taxes are levied are the assessments made for county purposes, the duties performed by the assessors are really performed for the county, and tax sales are conducted by the county and not township authorities. Provisions of the law relating to the levy and collection of taxes which were peculiar to townships were incorporated in "The General Township Act" of July 14, 1917, and are found in Chapter VIII, Articles I and II, sections 390 to 439 inclusive. The provisions included in this chapter are such as are general in character, but of interest to persons concerned with taxation for township purposes.

In addition to the provisions included in this Chapter and in Chapter VIII, authority for the levying of taxes for particular purposes will be found in the following sections, viz: 2014-2018, 2047.

Attention is also called to the Act of June 10, 1881, P. L. 105, which provides that when any local or special law in any township, which provided for the levy, assessment and collection of road taxes, is repealed, the general road law shall apply. This act seems to be declaratory to the general rule in such cases.

(a) Certain Classes of Property Not Taxable for Township Purposes.

1534. Hereafter no law of this Commonwealth rendering moneys owing by solvent debtors liable to be assessed and taxed for any purpose shall be construed and held to make the same liable, to be assessed and taxed for borough and township purposes; but the same shall be exempt from any charge, tax or assessment for any such purposes: Provided, That nothing in this act contained shall be held to apply to any case in which such taxes have been heretofore actually assessed and paid.

Sec. 22, Act of Apr. 25, 1850, P. L. 569.

A borough has no authority to assess and levy a tax upon money at interest, or money owing by solvent debtors. This section is not repealed by Clause 24, Section 2 of the Act of April 3, 1851, P. L. 320. *Goepf v. Borough of Bethlehem*, 28 Pa. 249.

None of the classes of property made taxable by this section for county purposes, and, in cities coextensive with counties, for city and county purposes, shall be taxed or taxable for any other purpose or for state purposes under the laws of this Commonwealth.

Last proviso of Sec. 1, Act of June 17, 1913, P. L. 507.

This section of the Act of June 17, 1913, enumerates the classes of personal property which are taxable for county purposes. The above proviso prohibits the levy of township taxes upon such property.

(b) Assessors.

(1) In Townships of the First Class.

1535. In every year in which takes place the triennial assessment of property for taxation, the qualified voters in each township of the first class shall elect, at the township election, two citizens, resident in said township, to be assistant assessors; and the triennial assessment of property for taxation, provided for by existing laws, shall be made in each township of the first class by the township assessor and the said assistant assessors, subject to correction by the County Commissioners and to appeal by taxable persons in accordance with existing laws: (Provided, however, that for the triennial assessment which is to take place in the year of our Lord, one thousand nine hundred and three, two such assistant assessors shall be appointed by the board of township commissioners of each township of the first class.)

Sec. 1, Act of April 23, 1903, P. L. 284.

In view of the schedule to the Constitution of November 2, 1909, and the amendments to the Constitution changing the municipal election to every second year, this system seems no longer practicable.

The first clause of this section relating to the election of two assistant assessors is impliedly repealed by section 121, *supra*, of The General Township Act, and the proviso to the section is obsolete. This leaves in force the clause giving power to the assessor and assistant assessors to make triennial assessments.

1536. The duties of the assistant assessors provided for in this act shall extend only to the valuation of property for taxation, and nothing in this act shall be construed to supply or affect the provision of any statute providing for the election of assistant assessors for making the registry list of voters, or the performance of other duties relating to elections.

Sec. 2, Act of April 23, 1903, P. L. 284.

The assistant assessor who makes the registry list of voters is elected under the act of June 16, 1891, P. L. 298, as amended by Act of Apr. 20, 1917, P. L. 87.

1537. The assessors and assistant assessors in townships of the first class shall each receive as compensation for his services five dollars per diem, for each day actually employed in the duties of his office, to be computed and paid as provided by existing laws with reference to the compensation of assessors.

Sec. 3, Act of April 23, 1903, P. L. 284.

1538. The township assessor shall receive as compensation for his services five dollars per diem, for each day actually employed in the intervening years between the years the triennial assessment is made.

Sec. 2, Act of Apr. 20, 1905, P. L. 236.

The township assessor referred to is the assessor in first class townships.

1539. The assessor in each township of the first class in this Commonwealth shall receive, as compensation for his services, ten (\$10.00) dollars per diem for each day actually employed by him in the performance of the duties of his office, both in making the triennial assessment and in making the supplemental assessments, in the intervening years between the years of the triennial assessment; the said compensation to be paid by the county as heretofore. The compensation of the assistant assessors in the said townships of the first class shall be five (\$5.00) dollars per diem for each day actually employed by them, respectively, in the performance of the duties of their office; to be paid by the county as heretofore.

Sec. 1, Act of May 20, 1913, P. L. 264. This act was held unconstitutional for the reason that its title fails to give notice of the shifting of the jurisdiction of the county commissioners to audit and adjust the accounts of assessors to the township commissioners. (See section 3 of this act.) The compensation of assessors of first class townships is fixed by Sec. 2, of the Act of April 20, 1905, P. L. 236 at \$5.00 a day: *Kowalski v. Northumberland County*, 25 D. R. 313.

The Act of 1905 referred to in the above case provides only for compensation in the intervening years between the triennials. For compensation of the assessor and assistant assessors during the year of the triennial, see the Act of Apr. 23, 1903, P. L. 284, Sec. 3.

1540. The said assessors and assistant assessors shall make return, on oath or affirmation, to the township commissioners of the proper township, of the number of days actually employed by them in the performance of the duties of their office; and the township commissioners are hereby empowered to summon the respective assessors and assistant assessors before them, and examine them, upon oath or affirmation, as to the accuracy of the said return. When the township commissioners shall have determined, either from the returns of the assessors and assistant assessors or from their examination of them, as aforesaid, the number of days actually employed by them, respectively, in the performance of duties of their office, they shall certify the same to the county commissioners; and the said certificates shall be final and conclusive as to the number of days actually employed by the said assessor and assistant assessors in the perform-

ance of the duties of their office, upon which their compensation is to be calculated, as aforesaid.

Sec. 3, Act of May 20, 1913, P. L. 264. See notes to section immediately preceding.

1541. The assessors of townships of the first class be furnished by the county commissioners with all books, blank-forms and papers four months prior to the day appointed for appeal.

Sec. 1, Act of Apr. 20, 1905, P. L. 236.

1542. In case the assessors in any township of the first class in this Commonwealth are not able properly to complete the triennial assessment of property in their township, and make return thereof to the county commissioners, on or before the thirty first day of December, as provided by law, it shall be lawful for the said assessors to continue the performance of their duties, and to make return of their assessment to the county commissioners after the said thirty-first day of December: Provided, That, unless prevented by sickness or by stress of weather, the said assessor shall be continuously engaged in the actual performance of their duties, from and after the date of the delivery of the precept to them, until the assessment is completed and their return thereof made: And provided further, That in no case shall the return of the said assessment be made later than the fifteenth day of February of the year following the delivery of the precept to the said assessors.

Sec. 2, Act of May 20, 1913, P. L. 264. See *Kowalski v. Northumberland Co.*, 25 D. R. 313, holding this act unconstitutional for provisions contained in the third section.

(2) In Townships' of the Second Class.

1543. It shall be the duty of each assessor and assistant assessor of each township of the second class, borough, and ward in a borough to keep an account of the several days by him actually employed in the performance of his duties and to make return of the same to the county commissioners, verified by his oath or affirmation, and for each day so employed he shall receive the sum of five dollars.

Act of April 4, 1919, P. L. 35, as amended by Act of May 12, 1921, P. L. 286.

The assessor under the above act, shall keep account of days actually employed in the performance of his duties for which he shall receive five dollars per day, but he must follow the procedure prescribed by the Act of Assembly by filing with the County Commissioners a statement of the days employed and the amount claimed for his services, and also present the same to the controller for his endorsement or audit: *Voltz. v. County of Erie*, 3 *Erie Co. L. J.* 52.

(3) Filling of Vacancies in the Office of Assessor.

1544. If the electors of any township shall fail to choose an assessor or assistant assessor at the time appointed by law, or if any person elected to such office shall neglect or refuse to serve therein, or if any vacancy shall happen therein, by death or otherwise, the commissioners of the county shall appoint a fit person to fill the office who shall have the same powers, be subject to the same penalties, and receive the same compensation, as if he had been elected in manner aforesaid.

Sec. 87, Act of Apr. 15, 1834, P. L. 537.

1545. Whenever the commissioners of any county shall, under existing laws appoint a person to fill the office of assessor, such person shall serve until the next election for assessors as provided by this act.

Sec. 4, Act of Feb. 14, 1889, P. L. 7.

The provisions of this section are constitutional: *Comm. v. Coleman*, 9 Pa. C. C. 90. The commissioners may not appoint an assessor until they have tendered the precept to the assessor who has been elected: *Comm. v. Gregory*, 6 Luz. L. R. 127. Where, on the trial of a contested election for the office of assessor, the court of quarter sessions finds that there is a vacancy, the commissioners appoint. The court may not order a new election: *Street v. Comm.* 6 W. & S. 209.

1546. Whenever an assessor refuses or neglects to qualify as required by law, or refuses or neglects to receive the precept and books for the triennial or other assessment, the commissioners are hereby authorized to appoint a suitable person to serve as assessor on the eighth day after the time designated by law to begin the assessment.

Sec. 1, Act of May 5, 1897, P. L. 39.

(c) Registration of Real Estate in Townships of the First Class.

1547. Before the recorder of deeds of any county, wherein there is no board for the assessment and revision of taxes for State and county purposes, shall admit to record in his office any deed of conveyance of land in any township of the first class within said county, he shall charge, and collect from the person presenting the said deed of conveyance for record, the sum of fifteen (15) cents, as a fee for the service hereinafter prescribed; and, at the time of admitting the said deed of conveyance to record, the said recorder of deeds shall transmit to the town clerk of the township of the first class, in which the said land so conveyed may be located, an abstract of the said deed of conveyance, giving the name of the grantor, the name and address of the grantee, the acreage conveyed, if mentioned, and the consideration money mentioned; and, if the land conveyed be a lot

or lots on a recorded plan, the number or numbers by which the same may be designated on the plan, if mentioned in the deed; and it shall be the duty of the town clerk to note the said deed of conveyance in the record books hereinbefore directed to be kept, in the manner hereinbefore prescribed; and it shall be the further duty of the town clerk, without any fee or compensation therefor, other than the salary of his office, to ascertain and note on the said record books the election district or districts of the said township in which the said land so conveyed may be located.

Sec. 2, Act of April 29, 1909, P. L. 275, as amended by Sec. 2, Act of May 14, 1915, P. L. 489. Sec. 1 of this act was repealed by the township code. Provisions similar to the first section of this act are contained in section 303.

1548. It shall be the duty of the assessor and assistant assessor in each township of the first class, before making the triennial assessment, to examine the record books required by this act to be kept, and to assess each tract, piece, parcel, or lot of land in the said township in the name of the owner thereof, as shown by the said record books; and it shall further be the duty of the assessor, in the years intermediate between the triennial assessments, to revise the preceding assessment according to the changes of ownership as shown by the record books, so that each tract, piece, parcel, or lot of real estate in the said township shall be assessed in the name of the then owner as shown by the said record books, and to return the said revised assessment to the county commissioners in the manner directed by law.

Sec. 3, Act of April 29, 1909, P. L. 275.

1549. It is the purpose and intent of this act to provide a system of registration of real estate in townships of the first class within this Commonwealth, in order that, as far as may be practicable, all real estate in such townships shall be assessed for taxation in the name of the owner at the time of the assessment; and all acts or parts of acts, general, local, or special, inconsistent herewith, be and the same are hereby repealed.

Sec. 4, Act of April 29, 1909, P. L. 275.

(d) Appeals From Assessments by Townships and Taxpayers.

1550. The corporate authorities of any borough, township, school district, or poor district, which may feel aggrieved by any assessment of any property or other subject of taxation for its corporate purposes, shall have the right to appeal therefrom to the proper board of revision, court of common pleas, or to the Supreme, or Superior court, in the same manner, subject to the same procedure, and with

like effect as if such appeal were taken by a taxable with respect to his property.

Sec. 1, Act of May 10, 1921, P. L. 441.

1551. It shall be lawful for any person aggrieved by such rate or assessment, to apply by petition to the next court of quarter sessions of the respective county, who shall have power to take such order thereupon as to them shall be thought expedient, and the same shall conclude and bind all parties.

Sec. 36, Act of April 15, 1834, P. L. 509. This section allows an appeal only from the rate or assessment and not where the complaint is against the mode and form of the collection of taxes: *Miller et al, v. Gorman and Preston*, 38 Pa. 309.

If a taxpayer neglects to avail himself of the remedy furnished by the above section for his redress, he cannot set up the illegality of the tax as a defense in an action to recover taxes due: *Stewart v. Maple*, 70 Pa. 256.

1552. If any person, aggrieved by such rate or assessment, shall apply to a judge of such court, and give bond with surety to the satisfaction of such judge, it shall be lawful for such judge to make an order in writing, which shall stay all proceedings for the collection of the sum with which such person stands charged until such appeal be determined.

Sec. 37, Act of April 15, 1834, P. L. 509.

1553. The bond to be given in such case by the appellant shall be taken in the name of the township, in an amount equal to the sum with which such person stands charged, with condition for the payment of such sum, as by the determination of the next court of quarter sessions of the respective county, shall appear to be payable by him.

Sec. 38, Act of April 15, 1834, P. L. 509.

(e) Collection of Taxes.

1554. If any vacancy shall occur in the office of tax-collector, after any borough or township election, by reason of the erection of any new township or borough; or if the duly qualified electors of any borough or township shall fail to elect a tax-collector; or when a tax-collector that has been elected shall fail to qualify, or shall fail or neglect to perform the duties of such office, or shall neglect to give bond on or before the fourth day of the term of quarter sessions ensuing his election; or if any other vacancy shall occur by death, resignation, or otherwise,—the county commissioners of the county, in which such vacancy exists, shall fill such office by appointing a suitable person, resident of the district in which such vacancy exists.

Such appointment shall be for the unexpired term, and upon petition of the borough council or the supervisors or the township commissioners, or of ten citizens of the borough or township in which such vacancy exists.

Sec. 1, Act of May 17, 1917, P. L. 221. See section 183 for provisions regulating the filling of vacancies in the office of tax collector in second class townships.

This act is intended to cover a case of removal of an appointed tax collector where he has failed to qualify by renewing his bond: *Comm. v. Floyd*, 21 Luz. 298.

For other decisions on this act see notes to section 183.

1555. If no person resident within such district is willing to accept the appointment to fill such vacancy in the office of tax-collector, the authorities authorized to levy and assess taxes in such district shall petition the county commissioners for the appointment of a tax collector. Thereupon the county commissioners may appoint any citizen of the county to collect the taxes in such district.

Sec. 2, Act of May 17, 1917, P. L. 221. See section 183.

1556. The county commissioners of the several counties shall, on or before the first day of April of each year, at the expense of the county, furnish to the township commissioners of each township of the first class, for its use, a properly certified duplicate of the last adjusted valuation of all real estate, personal property, and occupations made taxable for county purposes in such township of the first class. Such duplicate shall state the name of each taxable, with the valuation, description, and kind of property and occupation of such taxable.

Sec. 1, Act of May 5, 1915, P. L. 258.

1557. Each collector of taxes before he assumes the duties of his office shall notify the county treasurer, in writing, setting forth his name, address, where the taxes are receivable, the office hours when he sits to receive taxes, and the district or districts for which he collects taxes.

Sec. 1, Act of March 26, 1915, P. L. 11.

1558. The county treasurer shall procure, at the expense of the county, a book to be known as the Tax Collectors' Address Book, wherein he shall cause to be set forth and indexed, by township and by borough, and by name of collector, the information furnished him as required in section one of this act. Such book shall be kept in the office of the county treasurer, and shall be open during office hours to public inspection.

Sec. 2, Act of March 26, 1915, P. L. 11.

1559. Any person, who neglects or refuses to comply with the provisions of this act shall on conviction summarily before any alderman, magistrate or justice of the peace be sentenced to pay a fine not more than fifty dollars.

Sec. 3, Act of March 26, 1915, P. L. 11,

1560. It shall and may be lawful for all the several courts of any county of this Commonwealth to require of the proper parties of any borough, township, or district, authorized and empowered to collect special taxes, a bond in such amount as the court shall direct, with one or more sureties, conditioned for the faithful collection and paying over of all special taxes, directed to be assessed and collected for the purpose of paying indebtedness or any other purpose, in pursuance of the provisions of any law now in force or hereafter passed, which bond shall be filed in the said court for the protection of all parties interested therein; and in case the said officer or officers refuse or neglect to give security as aforesaid to be approved by the court within the time ordered by the court it shall nevertheless be the duty of such officer or officers to assess and to levy the said taxes as required by law, and the court may appoint a tax collector who shall collect the said taxes and pay the same into court, to be distributed by the court to and among the persons entitled thereto: Provided, that before such tax collector shall enter upon his duties, he shall give a bond with one or more sureties to be approved by the court, for the faithful performance of the duties of his appointment.

Sec. 1, Act of May 25, 1878, P. L. 150.

The fact that a person is elected general tax collector of a township does not of itself confer the right upon such person to collect special taxes.

Where a tax collector is required to perform a duty special in its nature and and to give a special bond for its faithful performance no liability attaches therefor to his general bondsmen in the absence of an express declaration or an express statutory provision to the effect that they shall be so liable: *Comm. v. Perrego*, 40 *Sup. Ct.* 320.

Under this act the court may require a bond from the supervisors if they collect a special tax or from the tax collector or treasurer when they collect special taxes, conditioned for the faithful collection and paying over of the special tax to the parties entitled thereto: *Foster Township*, 2 *D. R.* 415.

For provision relating to bond of treasurer of first class townships as tax collector, see section 275, and for similar provisions relating to tax collectors in second class townships, see section 366.

The general township code makes no provision for bonds for the collection of special taxes.

1561. The several county, borough, township, school, poor and other authorities, now empowered, and which may hereafter be empowered, to levy taxes within the several boroughs and townships of this Commonwealth, shall, on or before the first day of August of each year after the first election of collector of taxes under this act,

issue their respective duplicates of taxes assessed to the collector of taxes of their respective boroughs and townships with their warrants attached, directing and authorizing him to collect the same, but road taxes may be worked out as heretofore. Provided, That such special and other road taxes, as it may be lawful and necessary to collect in money, may, at the discretion of the supervisors or road commissioners, be placed in the hands of the collector of taxes, with their warrant for collection by him; for which he shall receive five per centum of the amount collected by him, or the same may be collected by the supervisors or road commissioners as heretofore. Provided further, That the limitations in this act, as to time and the requirements hereof relating to the keeping an alphabetical list of persons charged with taxes, shall not apply to road taxes.

Sec. 4. Act of June 25, 1885, P. L. 187.

This section appears to be superseded by sections 399 and 423 of the township code, as to township taxes.

The Act of June 25, 1885, P. L. 187, is constitutional: *Bennett v. Hunt*, 148 Pa. 257; *Sycatara Township School District's Appeal*, 1 Superior Ct. 502.

The school code of May 18, 1911, P. L. 309, does not repeal the Act of 1887 in so far as the latter act relates to the collection of school taxes: *Black v. Duquesne Borough School*, 239 Pa. 96. But since the passage of the School Code of 1911, the school taxes must be levied according to that act: *Sterenson v. Henderson*, 234 Pa. 478, affirming 39 Pa. C. C. 237, 59 P. L. J. 665.

The borough tax collector has the right to collect the school taxes in the borough upon complying with the statutory requirement: *Rowley v. Greenville Borough School District*, 40 Pa. C. C. 140; *Jones v. Taylor Borough School District*, 15 Lack. J. 116.

Taxes can be collected even though duplicate is not in the collector's hands on the day appointed by statute. *Comm. ex. rel. Metcalf v. Winn*, 4 M. L. R. 146; s. c. 16 Luz. L. R. Rep. 275.

Where a tax collector knows that a duplicate is ready for him before August first, he cannot afterwards refuse to accept it, because it was not actually placed in his hands until after August first. The collector of taxes is bound to collect the taxes for the school district, and if he refuses, he may be compelled to do so by mandamus: *Sommerville v. Gallaher*, 13 Pa. C. C. 666.

1562. Every warrant to a collector issued as is hereinbefore provided, shall be effectual to authorize him to collect the sums charged in his duplicate during the period of three years from the date of his warrant.

Sec. 44, Act of April 15, 1834, P. L. 509.

1563. Hereafter the period during which warrants hereafter to be issued to collectors shall be effectual for the collection of taxes, shall be two years and no more; and so much of the forty-fourth section of the act of fifteenth of April, eighteen hundred and thirty-four, (P. L. 509) entitled "An act relating to county rates and levies," as is inconsistent herewith, be and the same is hereby repealed.

Sec. 21, Act of April 22, 1846, P. L. 486.

The fact that the life of the treasurer's warrant is fixed at two years does not extend the time for the settlement of his accounts, and the payment of the balance to the proper treasurers: *Comm. to use of School District of Sheraden Borough v. Farrell et al.*, 17 Pa. C. C. 263.

The right of action at law inures to a tax collector when the warrant for collection of taxes expires and the statute of limitation does not begin to run in favor of the owner as against this remedy until the right of action arises: *Comm. to use of etc., v. Mahan*, 12 Pa. Super. Ct. 616.

The collector is prohibited from starting suit for the recovery of taxes until after the expiration of his warrant: *Mosier v. Potter*, 11 Just. L. R. 51.

A tax collector can collect delinquent taxes while his warrant is in force only by distress or levy. After his warrant ceases to be effective, he can enter suit for them: *Kreider v. Hensel*, 8 Lane. L. R. 83.

1564. The collector of taxes shall have all the power for the collection of said taxes, during his term of office, heretofore vested in collectors of county taxes under existing laws, and be subject to the same liabilities and penalties for neglect, or violation of the duties of his office.

Sec. 5, Act of June 25, 1885, P. L. 187.

A tenant's goods on leased premises may be levied upon by the tax collector for borough taxes due on the real estate by the landlord: *Popp v. Eamigh*, 54 Super. Ct. 263.

1565. The collector of taxes shall provide an appropriate book, the cost of which shall be allowed to him in the settlement of his accounts, in which he shall enter in alphabetical order the names of all persons charged with taxes in the duplicates aforesaid, and showing the amount of such tax charged against each person, which book shall be at all times open to the inspection of each taxpayer, and shall be delivered by the collector of taxes at the expiration of his term to his successor in office.

Sec. 6, Act of June 25, 1885, P. L. 187.

1566. The collector of taxes shall, in person or by some person duly authorized, be in attendance for the purpose of receiving and receipting for taxes on Thursday, Friday and Saturday of each week, during the last two weeks of said sixty days between the hours of two o'clock and six o'clock in the afternoon, at his residence, or some other place in the proper township or borough, to be designated by him in the notice aforesaid.

Sec. 8, Act of June 25, 1885 P. L. 187.

The sixty days referred to in this section has reference to the time when discounts for the payment of taxes are allowed.

Section 423 of the Township Code allows a discount in second class townships for taxes paid before June first. The amendment of May 11, 1921, to sections 400, 401 and 402 eliminates all discount provisions in first class townships.

1567. It shall be lawful for any collector, with the approbation of the treasurer of the proper county or township, as the case may be

to employ a suitable person to act for him in the execution of his warrant; such collector and his surety being in all cases responsible for the acts of such deputy.

Sec. 51, Act of April 15, 1834, P. L. 509.

For provisions relating to appointment of deputy collectors in first class townships, see section 403.

1568. The executors or administrators of any deceased tax collector, within this Commonwealth, shall have the same powers, until the end of two years from the date of the warrant, to enforce the collection of the unpaid taxes, as the collector would have, if living.

Sec. 1, Act of March 26, 1867, P. L. 45.

1569. It shall be lawful for the executors or administrators of any deceased tax collector to employ a suitable person to act for them in the execution of the warrants, with all the powers possessed by the deceased collector.

Sec. 2, Act of March 26, 1867, P. L. 45.

1570. Tax collectors of townships and boroughs of the Commonwealth shall furnish each person, on the payment of taxes, with a numbered receipt setting out date, name of taxpayer, amount of tax and district in which taxpayer is assessed, from a book to be furnished by the county commissioners containing a stub, that on the stub a memoranda shall be made in ink of the number of the receipt, the date, name of taxpayer, amount of tax and district in which taxpayer is assessed.

Sec. 1, Act of June 25, 1895, P. L. 296.

Sections two and three of the above act relate to election matters.

1571. That any tax collector failing to comply with the provisions of this act shall be guilty of a misdemeanor, to be fined not more than two hundred dollars, or imprisoned not more than one year, or both, at the discretion of the court.

Sec. 4, Act of June 25, 1895, P. L. 296.

1572. The tax collectors of the several boroughs and townships of this Commonwealth, elected pursuant to the provisions of an act of Assembly, entitled "An act to authorize the election of tax collectors for the term of three years in the several boroughs and townships of this Commonwealth," approved the sixth day of June, Anno Domini one thousand eight hundred and ninety-three, and all other tax collectors of State, county, townships, road, school and borough taxes, elected or appointed by or under existing law, shall hereafter make monthly returns in writing to the several persons to whom the tax collected by said tax collector is by law required to be paid,

showing the amounts collected by them during the preceding month, and the amount of uncollected taxes upon their respective duplicates, or exhibit the duplicate showing the said uncollected taxes, at the close of each month during their respective terms of office, and shall pay over to the said persons to whom by law the said taxes are made payable, the amounts so collected by such tax collectors, monthly, less the commission or fees to which they are by law entitled for the collection of the same: Provided, That in the case of collectors of borough taxes, they shall also be required to file with the councils of their respective boroughs, duplicate returns for the taxes collected monthly by them as aforesaid, and duplicate receipts from the respective borough treasurers for the amount so paid over to them.

Sec. 1, Act of July 9, 1897, P. L. 242.

The Acts of July 9, 1897, P. L. 242, and May 21, 1913, P. L. 284, do not prevent the prosecution of a tax collector under the Act of June 3, 1885, P. L. 72: *Comm. v. Sittler*, 67 Pa. Super. Ct. 1, affirming 2 Northumb. L. J. 439; 13 Sch. L. R. 408, 3 Northumb. L. J. 138.

This section appears to be supplied as to townships of the second class by section 428, except as to statement of uncollected taxes.

1573. Any tax collector failing to comply with the requirements of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not exceeding one hundred dollars.

Sec. 2, Act of July 9, 1897, P. L. 242.

1574. From and after the passage of this act, it shall be lawful for the several county treasurers in this Commonwealth, hereafter elected or appointed, to charge and deduct from school, road and all other municipal taxes, collected and paid over to the proper authorities by them, the same rate per centum as compensation as hereafter may be legally allowed them for the collection and disbursement of county taxes: Provided, That such rate shall in no case exceed five per centum of the whole amount so collected and paid over.

Sec. 1, Act of May 23, 1887, P. L. 178.

The phrase "municipal taxes" seems to comprehend township taxes under the reasoning in *Dreese v. Freed*, 42 Pa. C. T. 242.

This act was probably passed for those counties in which all school, road and municipal taxes are collected by the county treasurers.

1575. The undivided interest of any tenant in common or coparcener of any seated lands in this Commonwealth shall not be sold, or title thereto be divested by any treasurer's or sheriff's sale, for the failure of any of said tenants in common or coparceners to pay their pro rata share of the taxes assessed against said land, if such tenant in common or coparcener has paid to the proper collector

of taxes his or her proportionate amount of taxes chargeable against such land; and the sale of such lands shall divest and pass title to such undivided shares or interest only in such land as is held by such persons who have failed or neglected to pay their proportionate part of such taxes.

Sec. 1, Act of May 24, 1917, P. L. 270.

1576. And any such tenant in common or coparcener shall have the right to pay his or her proportionate part of such taxes, at any time, before the sale of the land under any lien entered in the prothonotary's office or before any treasurer's sale, to the prothonotary or county treasurer; and it shall be the duty of the prothonotary or county treasurer to receive the same for the district levying the tax; and the sale of the residue of the shares or interest in such lands, on which the taxes remain unpaid, shall in no way effect the right, title, or interest of those who have paid their proportionate share of such taxes for which the land is sold.

Sec. 2, Act of May 24, 1917, P. L. 270.

1577. Any joint tenant, tenant in common, or coparcener of seated land in this Commonwealth, shall have the right to pay his, her, or their proportionate part of the amount of taxes due thereon; and it shall be the duty of the tax-collector to receive and receipt for the same; and the interest of any such joint tenant, tenant in common, or coparcener shall not be affected by any proceeding or sale to enforce payment of taxes on the other interest in said land.

Sec. 1, Act of June 23, 1917, P. L. 645.

1578. Exonerations may be made by the authorities and in the same manner as heretofore.

Sec. 10, Act of June 25, 1885, P. L. 187.

"From time immemorial—the power to exonerate collectors from liability for uncollected taxes, for reasons satisfactory to the taxing authorities, has been exercised by borough councils" although no statutory authority seems to exist. So that a tax collector may be exonerated by the borough authorities from his liability for taxes as fixed by the borough auditors several years earlier. *Jones v. Sharon Borough*, 238 Pa. 35. *Contra see Sinnamahoning Iron and Coal Co. v. Schaffer*, 14 D. R. 368, s. c. *Just. L. R.* 145.

Where the borough council was negligent in delivering duplicates to the collector the auditors should allow exonerations for taxes uncollected through no fault of the collector and surcharge the councilmen for taxes lost through their fault. *Comm. ex rel. Metcalf v. Winn*, 16 Luz. L. R. Rep. 275; s. c. 4 M. L. R. 146.

This section appears to be superseded as to township taxes by sections 405 and 430 of the township code.

1579. If any collector who shall have taken upon himself the duties of his office shall fail to perform such duties, he shall forfeit a sum

not exceeding forty dollars, to be recovered by the county or township, as the case may be, as debts of like amount are recoverable: Provided, that the sureties of a collector shall, notwithstanding such proceedings against him, remain liable according to the condition of their bond.

Sec. 41, Act of April 15, 1834, P. L. 509.

1580. It shall not be lawful for any county treasurer, county commissioner or commissioners, or any collector of taxes in any township, ward, or district nor for any other person on his or their behalf, to receive payment, or give any receipt for the payment of any taxes that have not been duly assessed, and returns of said assessment made according to law, nor shall any such treasurer, commissioner or commissioners, or collector, or other person, on his or their behalf, receive payment or give any receipt for the payment of any taxes from the payment of which the party assessed has been exonerated according to law, unless the party so exonerated shall himself appear in his own proper person, and tender payment of the taxes from which he had been so exonerated; and it shall not be lawful for any commissioner or commissioners of any county, or for any other person on his or their behalf, to add any name or names to the duplicate return or list of taxables, made or furnished by the assessor or assistant assessor of any township, ward, or district, and if any such treasurer, commissioner, commissioners, or collector, or other person on his or their behalf, shall violate any of the provisions of this section, he shall upon conviction thereof, before any court having competent jurisdiction, pay a fine of one hundred dollars for the use of the Commonwealth, and shall moreover be forthwith removed from office, and the vacancy thereby occasioned in either of said offices shall be filled or supplied as in other cases of vacancies in such office.

Part of Sec. 8, Act of May 27, 1841, P. L. 400.

The remaining provisions of this section were temporary and have expired.

Where a tax collector, under a warrant duly issued by the proper authorities, directing the collection of a tax that had been properly levied, collects a tax from a person who it was subsequently shown had been improperly assessed by the assessor and county commissioners, he is not criminally liable therefor. The act was directed against the voluntary payment and receipt of taxes to evade the election laws, and not against the enforcement of such payment by legal process: *Buck v. Commonwealth*, 90 Pa. 110.

1581. From and after the passage of this act, all unnaturalized foreign-born residents shall be subject to the payment of all taxes, assessed by virtue of the authority of this Commonwealth, of any county, city, borough, township or school district, within said Commonwealth, in the same manner and under the same penalties as citizens of this Commonwealth now are: Provided, that this act shall

not apply to any poll-tax which may be assessed for the purpose of qualifying citizens to vote.

Sec. 1, Act of March 30, 1911, P. L. 38.

1582. For the purpose of this act, any unnaturalized foreign-born person who shall reside or live within the boundaries of the Commonwealth of Pennsylvania for one whole year shall be considered a resident, and shall be subject to the provisions of this act.

Sec. 2, Act of March 30, 1911, P. L. 38.

1583. From and after the passage of this act all corporations, associations, companies, firms, or individuals employing persons who are not citizens of the United States, shall, upon the receipt of a written notice from the tax collector of the county or district in which such taxes were assessed, containing the name or names of the taxable or taxables and the amounts respectively due, deduct from the wages or earnings of such employe or employes a sum sufficient to pay the respective amounts of taxes assessed against each of such alien employes, and pay the same to the collectors of the district in which said aliens are employed within sixty days after said notice shall have been given.

Sec. 1, Act of June 7, 1897, P. L. 135.

In an action upon a tax collector bond neither the collector nor his sureties are liable for the alien taxes paid by employers under this act, not included in his tax duplicate nor in the settlement made by the borough auditors: *Dunbar Borough School District v. Kerwin et al*, 20 D. R. 404.

1584. Any corporation, association, company, firm or individual failing to comply with the provisions of this act shall forfeit and pay the sum of double the amount of the tax for each and every taxable whose taxes are not withheld and paid over as herein directed, to be recovered by action of assumpsit as debts of like amount are now by law recoverable, and when collected shall be paid into the treasury of the county in which such alien labor is or was employed for the use of such county.

Sec. 2, Act of June 7, 1897, P. L. 135.

1585. All persons who are authorized under existing laws to collect either road or poor taxes in the several boroughs and townships of this Commonwealth, are hereby authorized and empowered, in addition to the remedies heretofore provided, to collect either road or poor tax by levy and sale in the same manner as school and county taxes are now by law collected: Provided, however, that nothing

herein contained shall be construed to abridge any right secured under existing law to any person to work out any portion of his road tax.

Sec. 1, Act of May 22, 1895, P. L. 111.

The general reference is to sections 20 and 21 of the Act of April 15, 1834, P. L. 509. (*See Rice v. Burns, 9 Pa. Super. Ct. 58.*) These sections are as follows:

The commissioners of each county shall issue their warrants with the duplicates aforesaid, to the respective collectors of county rates and levies, therein authorizing and requiring them to demand and receive from every person in such duplicate named, the sum wherewith such person stands charged. Sec. 20, Act of April 15, 1834, P. L. 509.

If any person shall neglect or refuse to make payment of the amount due by him for such tax within thirty days from the time of demand so made, it shall be the duty of the collector aforesaid to levy such amount by distress and sale of the goods and chattels of such delinquent, given ten days' public notice of such sale by written or printed advertisements, and in case goods and chattels sufficient to satisfy the same with the costs cannot be found, such collector shall be authorized to take the body of such delinquent and convey him to the jail of the proper county there to remain until the amount of such tax together with the costs shall be paid or secured to be paid or until he shall be otherwise discharged by due course of law. Sec. 21, Act of April 15, 1834, P. L. 509.

By section 45, of the act of April 15, 1834, P. L. 509, the imprisonment of females for non-payment of taxes is prohibited.

Under Section 421, Clause I, of Act of July 14, 1917, P. L. 840, all taxes must now be paid in cash.

1586. The tenant or tenants, or other persons residing on lands, owned by persons not residing in the township, his, her, or their goods shall be liable to be levied on in manner aforesaid, for the payment of road taxes; and where any tenant or tenants shall have taken, or hereafter may take a lease of lands or tenements for one or more years, and of which the tenant be in possession at the time of assessing or levying the tax for public roads and highways, and shall pay the rate hereby imposed on the said lands or tenements so leased, in such case it shall be lawful for the tenant or tenants to deduct the tax out of the rent due, or to become due, or to recover the same from the owner or owners, by action of debt, with costs of suit: Provided, however, that nothing herein contained shall be so construed as to impair or make void any contract between landlord and tenant respecting the payment of the road tax.

Sec. 8, Act of April 6, 1802, P. L. 178.

1587. Every tenant who may or shall occupy or possess any lands or tenements, shall be liable to pay all the taxes, which during said occupancy or possession may thereon become due and payable; and having so paid such taxes, or any part thereof, it shall be lawful for him, by action of debt or otherwise, to recover said taxes from his landlord, or, at his election, to defalcate the amount thereof in the

payment of the rent due to such landlord, unless such defalcation or recovery would impair any contract or agreement between them previously made.

Sec. 6, Act of April 3, 1804, P. L. 517.

The power of a collector to take property of the tenant for non-payment of his landlord's tax is limited to that which is assessed against the realty while he occupied the premises: *Lanfer v. McGovern*, 6 North, C. R. 158.

A vendee may recover from a vendor prior taxes paid under a distress: *Henry v. Horstick*, 9 Watts 412; *Caldwell v. Moore*, 11 Pa. 58.

A lessee under an *cil* lease, having more than a mere license, may recover from the lessor taxes on the land paid under compulsion: *Kitchen v. Smith*, 101 Pa. 452.

This provision applies only to taxes assessed on the land, not upon a ground rent issuing thereout: *Franciscus v. Reigart*, 4 Watts, 98.

1588. The goods and chattels of any person occupying any real estate, shall be liable to distress and sale, for the non-payment of any taxes assessed upon such real estate, during his possession or occupancy and remaining unpaid in like manner, as if they were the goods and chattels of the owner of such real estate.

Sec. 46, Act of April 15, 1834, P. L. 509.

In construing this section the court in *Smeich v. County of York*, 68 Pa. 439, says:

"The 46th Section of the Act of 15th April, 1834, was taken, we are informed by the revisers of the code, from the 6th Section of the Act of 1804 and the 8th Section of the Act of 1802. * * * * It is evident that the revisers rejected the features of the Acts of 1802 and 1804 which appeared to confine the liability to the goods of tenants only holding by lease and extended it to the goods of the persons occupying any real estate. But as this would comprehend an alienee or other person coming in under a conveyance long after the taxes were laid, the revisers adopted the feature of the 8th Section of the Act of 1802 which expressly confines the liability to the person in possession at the time of assessing or levying the tax for public roads and highways. Hence the provisions in the Act of 1834 is that the goods of the occupier shall be liable for the non-payment of any taxes assessed upon such real estate during his possession or occupancy and remaining unpaid. The section is concisely written, and clearly expressed and has but one meaning."

Real estate which has passed to assignees under a voluntary deed of assignment for the benefit of creditors is not exempt from the payment of taxes, whether assessed thereon before or after the assignment was made. The personal property remaining on the land thus taxed, after the assignment, is liable to distress for the non-payment of the taxes: *Wright and Slingluff v. Wigton, et. al.*, 84 Pa. 163.

When there is sufficient personal property upon the premises to satisfy a claim for taxes, a tax collector, who makes return of the land for non-payment, is responsible to the owner for damages: *Kean v. Kinnear*, 171 Pa. 639.

Personal property of the taxpayer which had been sold by the sheriff is not liable for taxes before its removal from the premises, as the purchasers at the sheriffs' sale are not the occupiers of the real estate: *Moore v. Marsh*, 60 Pa. 46.

Personal property, bought by a landlord at a sale under his distress for rent in arrears, and by him left in charge of the tenant, subsequently sold by him at private sale to another party, and by the latter left upon the premises in charge of the tenant, is not liable to levy and sale for taxes assessed against the landlord or tenant: *Lewis v. Harvard*, 1 *Chester Co.* 189.

The wife is not such an occupier of the husband's real estate, while he is himself occupying the same, as to make her separate property liable for the taxes assessed and levied against the husband: *Ferguson v. Moore*, 5 *Super. Ct.* 349.

The goods of the occupier cannot be levied and sold unless the taxes were assessed during his possession or occupancy of the land: *Wright v. Wigton*, 84 *Pa.* 163; *Smcich v. York*, 68 *Pa.* 439; *Hartman v. Hazen*, 28 *Pa. C. C.* 311; *Sittler v. Singer Mfg. Co.*, 30 *Pa. C. C.* 1; s. c. 14 *D. R.* 382.

The fact that there is personal property on the premises out of which the taxes could have been collected is not a defense to a scire facias on a tax lien filed under the Act of June 4, 1901, P. L. 364: *Claysville School District v. Worrell*, 37 *Super. Ct.* 10.

The act of June 4, 1901, P. L. 364, so far as it relates to tax liens and tax claims, is repealed and supplied by the Act of May 24, 1921, P. L. 1089, sections 1607 to 1638.

The fact that one who was tenant at the time the taxes were assessed becomes the owner of the land before they are collected does not relieve his goods and chattels from liability: *Popp v. Eamigh*, 54 *Super. Ct.* 263.

An owner of land is not liable for the taxes of a former owner: *Scott v. Whitley*, 2 *Clark* 118.

The act evidently refers to a person who maintains in relation to real estate a responsible or beneficial occupancy: *Ferguson v. Moore*, 5 *Super. Ct.* 349.

1589. It shall not be lawful for any collector to institute a suit, for the recovery of any tax in any court of this State or before any alderman or justice of the peace of this State, and no such court, alderman or justice shall issue process for such purposes.

See, 50, Act of April 15, 1834, P. L. 509.

This means during the life of the tax warrant. Upon the expiration of the warrant the collector has a right of action under the Act of April 11, 1848, P. L. 517, *infra* section 1590. See *Comm. v. Mahon*, 12 *Super. Ct.* 616; *McCracken v. Elder*, 34 *Pa.* 239.

The collector of taxes is prohibited from instituting suit for the recovery of any taxes until after the expiration of his warrant, and the justice being without jurisdiction, is forbidden to issue process for such purpose: *Mosier v. Potter*, 11 *Just. L. R.* 51.

1593. The provisions of the fiftieth section of an act of the General Assembly of this Commonwealth, entitled "An act relating to county rates and levies, and township rates and levies," passed April fifteenth, one thousand eight hundred and thirty-four, (P. L. 509), shall not be so construed as to prohibit a collector of taxes from instituting suit or suits for the recovery of taxes due and unpaid, at any time after the expiration of his warrant; but in all cases where taxes are due and unpaid to any collector, after the expiration of his warrant,

when such collector, has not been legally exonerated therefrom, every such collector, or person, his executors, administrators, or any of them, is hereby declared to have full right and power to sue for and recover the same, with interest thereon, after the expiration of his warrant as aforesaid, from all and every person and persons, bodies politic and corporate, owing the same, as other debts of like amount are now by law recoverable.

Sec. 3, Act of April 11, 1848, P. L. 517.

1591. Return of taxes assessed by the authorities of any county, school district, poor district, borough, incorporated town, or township against seated lands, shall be made whenever personal property cannot be found thereon sufficient to pay such taxes, to the commissioners of the county, on or before the first day of February succeeding the date when the taxes were assessed. Whenever any such taxes are not paid within two years after the date of the assessment, such seated lands shall be advertised and sold by the county treasurer, at the time and in the manner, and with the same conditions and effect, as unseated lands.

Sec. 1, Act of May 21, 1913, P. L. 285, as amended by Sec. 1, Act of June 1, 1915, P. L. 660.

This act provides an alternate method for the collection of delinquent taxes on seated lands, the other method being provided by the Act of May 24, 1921, P. L. 1089. See sections 1607 to 1638 inclusive.

1592. From and after the passage of this act when seated lands shall be returned for non-payment of taxes the collector of taxes or other person making such return shall add to the amount of each item of tax for which the same is returned, five per centum thereof, which shall be recovered or collected along with said taxes, as the same are now recovered or collected by law and when so recovered and collected the said five per centum shall be paid to the collector of taxes or other person making such return.

Sec. 1, Act of April 19, 1901, P. L. 81.

1593. It shall be the duty of supervisors and collectors of road taxes, and of all collectors of any other taxes whatever, to make return to the county commissioners of any exonerations claimed by them, on or before the first day of January in each year; and it shall not be lawful for the said county commissioners to grant any exonerations after that time, nor for the county treasurer to sell any lands which shall have been returned and taxes exonerated, after the said time.

Sec. 3, Act of April 21, 1856, P. L. 477.

This section was not repealed by the Act of June 25, 1885, P. L. 187. See *Bigger v. Soonton*, 30 Super. Ct. 503.

The time for making returns for exonerations has been changed to the first day of February by the Act of May 21, 1913, P. L. 285, as amended by the Act of June 1, 1915, P. L. 660.

The provisions of this section and of the Act of February 23, 1858, P. L. 45, requiring tax collectors to make their returns to the county commissioners for exonerations, on or before the first day of February of the year next succeeding the assessment of such taxes, is mandatory and its observance is a condition precedent of the right of the commissioners to sell the land so returned for the unpaid taxes. The returns of the collectors for exonerations must be sufficiently definite to enable the owner and also the officer and the public to identify and determine from the returns the exact properties which are delinquent and liable to sale: *Vandermark v. Phillips*, 116 Pa. 199.

If the return by the collector is made in time, an exoneration made by the commissioners after the date specified by law is valid, and the liability of the land for the taxes remains, unaffected by the delay: *Winton Coal Company v. Campbell*, 2 Lack. J. 36½.

The tax must be returned by the collector for exoneration within the time limited by the statute, or it cannot be enforced against the land. Prior to that the collector is charged with its collection from the owner, or out of the personal property upon the land. If he is not able to secure it in this way, it is his duty to return it and be exonerated, and if he fails to do this, and to do it within the proper time he and his bondsmen are liable for the tax and the land is entirely discharged: *Vandermark v. Phillips*, 116 Pa. 199; *Winton Coal Company v. Campbell*, 2 Lack. J. 36½; *Smith and Warren v. Meadow Brook Brewing Company*, 3 Lack. J. 145.

1594. Taxes charged upon unseated lands shall not be collected by the collectors of taxes, but shall be certified and returned by the several authorities levying the same to the county commissioners to be collected as heretofore.

Sec. 12, Act of June 25, 1885, P. L. 187.

Whether lands are seated or unseated is determined by the assessment which cannot be attacked collaterally: *Pittsburgh Hunting Club v. Snyder*, 51 Super. Ct. 17½.

This section is not affected by the Act of June 4, 1901, P. L. 364, which statute only covers seated lands: *Long et al., v. Phillips*, 241 Pa. 246.

A tax collector is not entitled as collector to commissions on unseated land taxes, yet he should of right be compensated as an agent or attorney in fact, for his successful efforts in collecting or obtaining these taxes: *Comm. v. Scott*, 7 Pa. C. C. 409.

A collector of taxes is not charged with the collection of taxes on unseated lands: *Sinnemahoning Iron and Coal Co., v. Cameron Co. et al.*, 12 Pa. C. C. 291; *Bradford County, Appellant v. Beardsley*, 60 Super. Ct. 478.

Sec. 13 of this act saves local laws on the same subject from repeal.

1595. After June first, Anno Domini one thousand eight hundred and eighty-eight, all taxes levied upon unseated lands, within the counties of this Commonwealth, shall be paid by the owner or owners of such unseated lands within the year for which the same are levied; and in case of the refusal of any person or persons, companies or

bodies corporate, owner or owners of such unseated lands to pay the taxes so levied within the year for which the same were levied and collectible, then interest at the rate of six per centum per annum is to be charged upon the amount of said taxes, or any part thereof, remaining due and unpaid from and after the first day of the year following that for which said taxes were levied until the same has been paid in full, or the land sold as now provided by law for the sale of unseated lands: Provided, no interest shall be charged upon taxes levied for the years one thousand eight hundred and eighty-six and one thousand eight hundred and eighty-seven.

Sec. 1, Act of June 6, 1887, P. L. 363.

1596. Any joint tenant in common or coparcener of unseated lands in this Commonwealth, shall have the right to pay his, her or their proportionate part of the amount of taxes due thereon at any time before the sale thereof by the county treasurer; and it shall be the duty of the said treasurer to receive and receipt for the same; and he may sell the residue of the shares or interest in said lands on which the taxes remain unpaid, any law, usage or custom heretofore to the contrary notwithstanding.

Sec. 31, Act of April 25, 1850, P. L. 569.

(f) Rebates For Planting Trees Along Roads and For Timber Lands.

1597. Any person liable to road tax who shall transplant to the side of the public highway on his own premises any fruit, shade or forest trees, of suitable size shall be allowed by the supervisors of roads, or boards of supervisors of roads, where roads run through or adjoin cultivated fields, in abatement of his road tax, one dollar for every two trees set out; but no row of elms shall be placed nearer than seventy feet; no row of maples or other forest trees nearer than fifty feet, except locust and Carolina poplar, which may be set thirty feet apart, and except fruit trees, which may be set forty feet apart; and no allowance as before mentioned shall be made unless such trees shall have been set out the year previous to the demand for such abatement of tax, and are living and well protected from domestic animals at the time of such demand.

Sec. 1, Act of July 2, 1901, P. L. 610.

The allowance of this rebate is mandatory and may be enforced by mandamus: *Public Roads* (op. Dep. Atty. Gen.), 14 D. R. 288; s. c. *Farmers Exemptions*, 30 Pa. C. C. 590; *Planting of Trees Along Public Roads*, 8 Dauphin Co., 6.

This act is not retrospective. A taxpayer is not entitled to an abatement because of trees transplanted to the side of a public road more than a year before the application and before the passage of this act: *Harple v. Rudy*, 23 Lanc. L. R. 41.

1598. Any fruit, shade or forest trees growing naturally by the side of the public highway, where said public highway runs through cultivated lands, shall be allowed for in the same manner and on the same conditions as in the preceding section.

Sec. 2, Act of July 2, 1901, P. L. 610.

1599. Any trees transplanted by the side of the public highway as aforesaid, in the place of trees that have died, shall be allowed for in the same manner and on the same conditions as in the first section of this act.

Sec. 3, Act of July 2, 1901, P. L. 610.

1600. No person shall be allowed an abatement, as aforesaid, of more than one-quarter of his said annual road tax.

Sec. 4, Act of July 2, 1901, P. L. 610.

1601. Any person who shall cut down, kill or injure any living tree planted or growing naturally as aforesaid, or who negligently or carelessly suffers a horse or other domestic animal, driven by or for him to injure any of the trees hereinbefore mentioned, upon conviction thereof shall be subject to a penalty of not less than one dollar, nor more than five dollars with costs of suit, for each and every tree so cut down, killed, removed or injured: Provided, that if the defendant or defendants neglect or refuse to pay at once the penalty so imposed and costs, or shall not enter sufficient bail for the payment of the same, within ten days, he or they shall be committed to the common jail of the county in which the offence was committed, for a period of not less than one day for each dollar of penalty imposed and costs: Provided, however, That the owner of the land upon which the trees are growing and upon which said abatement has been granted, may remove such trees, on condition that he will immediately plant and maintain another tree or trees, in the place or places of those removed by him, or refund to township said abatement, originally allowed for said tree or trees.

Sec. 5, Act of July 2, 1901, P. L. 610.

1602. All moneys collected as a penalty in accordance with section five of this act shall be paid to the supervisors of roads or boards of supervisors of roads and form part of the road fund of the township in which the offence was committed.

Sec. 6, Act of July 2, 1901, P. L. 610.

1603. It shall be the duty of the supervisor of roads or the boards of supervisors of roads, to keep a permanent record, in a book specially prepared for that purpose, and which book shall be the property of the township, of all trees upon which the said abatement, as here-

inbefore mentioned, has been granted; and when any tree or trees have been removed, with or without the consent of the supervisors of roads or boards of supervisors of roads, the date thereof shall be distinctly entered in the said book.

Sec. 7, Act of July 2, 1901, P. L. 610.

1604. In consideration of the public benefit to be derived from the retention of forest or timber trees, the owner or owners of land in this Commonwealth, having on it forest or timber trees averaging not fewer than fifty trees to the acre, each of said trees to measure at least eight inches in diameter, at a height six feet above the surface of the ground, with no portion of the said land absolutely cleared of the said trees, shall, upon filing with the assessor of their respective townships or districts, annually, an affidavit made by said owner or owners, or by some one in his, her or their behalf, upon blanks to be provided by the county commissioners of the respective counties, and by them to be furnished to the assessors for the purposes herein intended, setting forth the number of acres of timber land within the requirements of this act, be entitled to receive annually, during the period that the said trees are maintained in good condition upon the said land, a rebate equal to eighty per centum of all taxes, local and county, annually assessed and paid upon said lands, or so much of the eighty per centum as shall not exceed in all the sum of forty-five cents per acre; the said rebate to be deducted from said taxes pro rata, and receipted for by the respective tax collectors or county treasurer: Provided, however, that no one property owner shall be entitled to receive said rebate on more than fifty acres.

Sec. 1, Act of April 8, 1905, P. L. 118.

See notes to section immediately following.

1605. It shall be the duty of the assessor, when such affidavit is filed with him, to record upon his assessment-book the amount of timber land upon which the owner or owners may be entitled to receive the rebate, together with the value at which such timber land shall be assessed, for the purpose of furnishing the necessary information to those who shall prepare the respective tax duplicates, and upon which duplicates the amount of the said rebate shall be stated. No additional compensation shall be allowed any assessor for performing the duties required by this act. It shall likewise be the duty of each assessor, after receiving such affidavit, to file the same, at the time of making his return, with the county commissioners of the respective counties.

Sec. 2, Act of April 8, 1905, P. L. 118.

This act was held unconstitutional in *Tubbs v. Tioga Co.*, 16 D. R. 318, s. c. 32 Pa. C. C. 504, as being in contravention of Section 1, Article IX of the Constitution. See also *Christley v. Buller Co.*, 37 Super. Ct. 32.

1606. Whenever timber, on land which is included in the class of land known as auxiliary forest reserves, is about to be harvested, the then owner of the timber on said land shall give a bond to the county treasurer in twenty per centum of the amount of the estimated value of the timber to be harvested, and to be approved by the court of the county, conditioned to pay to the county treasurer, within ninety days after harvesting, ten per centum of the value of the trees immediately at and before the time of harvesting; which amount shall be ascertained by statement and return, under oath or affirmation, furnished in triplicate, one to the county commissioners, one to the county treasurer, and one to the commission, immediately after harvesting, by the then owner of the land, setting forth said value; which sum thus paid shall be divided and distributed by the county treasurer of each county—to the county, and to the poor district, the road district, and the school district of the township in which the auxiliary reserve is situate, pro rata, based upon the last assessed millage of taxation for county, poor, road, and school purposes within said taxing district.

Such sum of money when ascertained to be due as a tax by the filing of the foregoing statement and return, under oath, and, as hereinbefore provided, directed to be paid to the county treasurer by the owner of an auxiliary forest reserve, shall, from the time of such filing, be and remain a lien upon the land of such owner until payment shall have been made: And be it further provided, That all moneys received by the boards of supervisors shall be appropriated exclusively to the opening, maintenance, and repair of the public roads now or hereafter passing through or into said auxiliary forest reserves, or upon which said reserves now or hereafter may abut; and, in the event that no public highways pass through or into said reserves, or none of said reserves abut on such highways, then said moneys shall be used for general township road purposes.

Sec. 3, Act of June 5, 1913, P. L. 405.

The provisions of this section which relate to the distribution and use of the tax thus realized are alone germane to this work. The entire section has however, been incorporated in order to render it intelligible.

Under other sections of this act auxiliary forest reserves may not be assessed for a sum exceeding one dollar per acre. The assessment would of course be fixed by the county.

But see also Section 3 of the Act of June 5, 1913, P. L. 426, for provisions as to taxation when land has been classed as auxiliary forest reserves, and has been removed from such class, before maturity, by the action of the owner of the land.

In addition to the amount realized from the taxation of auxiliary forest reserves and the sum received under the above provisions of Section 3, of the Act of June 5, 1913, P. L. 405, such reserves are liable to a charge of two cents per acre under the Act of June 5, 1913, P. L. 408. This charge is payable by the State.

Under the Act of April 5, 1905, P. L. 111, State forest reserves are subject to a charge of two cents per acre for road purposes, which amount is also payable by the State.

(g) Tax Liens.

1607. This act shall be known and may be cited as the **Municipal Tax Lien Act**.

The word "taxes" as used in this act, means any county, bridge, road, borough, township, school, or poor taxes.

The words "tax claims" or "liens," as used in this act, means the claim filed to recover taxes.

The word "municipalities," as used in this act, means any county, borough, incorporated town, township, school district, and poor district.

The word "claimant," as used in this act, means the plaintiff in whose favor the tax claim is filed as a lien.

The word "owner," as used in this act, means the person or persons in whose name the property is registered if registered, according to law; and, in all other cases, means any person or persons in open, peaceable, and notorious possession of the property as apparent owner or owners thereof, if any, or the reputed owner or owners thereof, in the neighborhood of such property.

The word "property," as used in this act, means seated real property subject to the lien, and against which the claim is filed as a lien.

Sec. 1, Act of May 24, 1921, P. L. 1089.

1608. All taxes which may hereafter be lawfully imposed or assessed on any property in municipalities of this Commonwealth, in the manner and to the extent hereinafter set forth, shall be, and they are hereby declared to be, a first lien on said property, together with all charges, expenses, and fees added thereto for failure to pay promptly; and such liens shall have priority to, and be fully paid and satisfied out of the proceeds of any judicial sale of said property before, any other obligation, judgment, claim, lien, or estate, with which the said property may become charged or for which it may become liable, save and except only the costs of the sale and of the writ upon which it is made.

Sec. 2, Act of May 24, 1921, P. L. 1089.

1609. The lien for taxes shall exist in favor of, and the claim therefor may be filed against the property taxed by, the several municipalities to which the tax is payable.

All real property, now subject to taxation by whomsoever owned and for whatsoever purpose used, shall be subject to all taxes and

tax claims herein provided for, except that all property owned by the State, county, city, or other municipal divisions, and actual places of religious worship, places of burial not used for or held for private or corporate profit, and institutions of purely public charity, shall not be subject to tax or tax claims.

Sec. 3, Act of May 24, 1921, P. L. 1089.

1610. Claims for taxes must be filed in the court of common pleas of the county in which the property is situated on or before the last day of the third calendar year after that in which the taxes are first payable. A number of years taxes, if payable to the same plaintiff, may be included in one claim.

Such tax claim, if filed within the period aforesaid, shall remain a lien upon said properties until fully paid and satisfied: Provided, however, That either a suggestion of nonpayment and an averment of default in the form hereinafter provided, be filed in such cases either before or after judgment on the scire facias, or else a writ of scire facias, in the form herein provided, be issued to revive the same within each period of five years following: (a) the date on which said claim was filed; (b) the date on which a writ of scire facias was issued thereon; (c) the date on which any judgment was entered thereon; (d) the date on which a previous suggestion of nonpayment and default was filed thereon; or (e) the date on which a judgment of revival was obtained thereon.

The suggestion and averment shall be in the following form, under the caption of the claim:

And now....., the claimant, by..... his solicitor, suggests of record that the above claim is still due and owing to the claimant, and avers that the owner is still in default for nonpayment thereof. The prothonotary is hereby directed to enter this suggestion and averment of the claim on the municipal lien or the proper docket, also to index it upon the judgment index and on the locality index of the court, for the purpose of continuing the lien of the claim.

Such suggestion and averment must be signed by the solicitor or proper authorities by whom the tax was levied. The prothonotary shall docket and index the suggestion and averment as directed therein, and for such services shall be entitled to such fee as provided for by the various prothonotaries' fee bills, to be taxed and collected as other costs in the claim. The filing and indexing of such suggestion and averment within five years of filing the claim, or the issuing of any writ of scire facias thereon or of any judgment thereon, or of the filing of any prior suggestion and averment of default, shall have the same force and effect, for the purposes of continuing and preserv-

ing the lien of the claim, as though a writ of scire facias had been issued or a judgment or judgment of revival had been obtained within such period: Provided, That no writ of levavi facias shall be issued upon a claim for the purpose of exposing the property liened to sheriff's sale, except after a judgment shall have been duly obtained upon the claim as provided in this section, and such judgment must have been obtained within five years of the issuance of the levavi facias.

Whenever the lien of a claim has been revived and continued by the filing and indexing of a suggestion and averment of default, the claimant may, at any time within five years therefrom, issue a writ of scire facias thereon, reciting all suggestions and averment of default filed since the filing of the claim, and shall proceed thereon in the manner herein provided, subject to the right of the owner to raise any defence arising since the last judgment.

If a claim be not filed within the time aforesaid or if it be not prosecuted in the manner and at the time aforesaid, it shall be wholly lost.

Sec. 4, Act of May 24, 1921, P. L. 1089.

1611. Said claim shall set forth:

- (a) The name of the municipality by which filed.
- (b) The name of the owner, and a description of the property against which it is filed.
- (c) The authority under or by virtue of which the tax was levied, as well as the time for which the tax was levied.
- (d) Said claim must be signed by the solicitor or proper authority by whom the tax was levied.

Sec. 5, Act of May 24, 1921, P. L. 1089.

1612. The property described in tax claims shall include the whole property against which the tax is levied. No tax claim shall be invalid by reason of including therein property to a greater depth than as above provided, but the court in which the same is filed may, at any time prior to judgment thereon but not afterwards, upon it appearing that such claim includes property to a greater depth than is hereby made subject to such claim, limit the lien thereof to the proper depth. In all cases where a tax is levied on or filed against separate and distinct properties in one amount covering all the proper public authority shall, if tendered with all costs, if any, accept payment of the portion of the whole amount of said tax chargeable upon each or any of the separate and distinct properties so charged together, according to the tax rate and assessed valuation thereof, and payment and satisfaction of any one portion may be made without prejudice to the claim against the remainder.

Sec. 6, Act of May 24, 1921, P. L. 1089.

1613. Any person having an interest in the property, whensoever acquired, may, after ten days prior notice in writing, by leave of court, intervene as a party defendant and make defence thereto with the same effect as if he had been originally named as a defendant in the claim filed. And the claimant; may, by writing filed at his costs, strike off the name of any defendant therein, and may substitute as a defendant, and issue a scire facias against, any person who may have any interest therein as owner, or who is the personal representative of an owner who had died either before or after filing the claim, but substitution shall always be without prejudice to any intervening rights.

Sec. 7, Act of May 24, 1921, P. L. 1089.

1614. In all cases where a tax claim is levied on, or filed against, separate and distinct properties as one estate, it shall and may be lawful for the proper public authority, either before or after filing a claim therefor, to apportion the same ratably upon the separate and distinct properties so assessed together. And the court in which the claim is filed, on proof that the properties were separate and distinct at the time the tax was levied, shall, at any stage of the proceedings, apportion the charge against such properties. When apportioned, they shall be treated and considered in all respects as if separate and distinct claims had been filed; and payment and satisfaction of any one portion may be made without prejudice to the claim as against the rest.

Sec. 8, Act of May 24, 1921, P. L. 1089.

1615. The claim shall be sued by writ of scire facias, and the form thereof shall be substantially as follows:

The Commonwealth of Pennsylvania, to (names of the parties defendant), Greeting:

Whereas, The (give name of the municipality), on the day of, Anno Domini 1.....filed its claim in our court of common pleas of.....County, at No... Term, 1....., M. L. D., for the sum of \$..... with interest from the.....day of....., 1..... for (give the tax claim as filed), against the following property, situate in (give location and brief description of the property), owned or reputed to be owned by you:

And whereas, we have been given to understand that said claim is still due and unpaid, and remains a lien against the said property:

Now, you are hereby notified to file your affidavit of defence to said claim, if defence you have thereto, in the office of the prothonotary of our said court, within fifteen days after the service of this writ upon you. If no affidavit of defence be filed within said time,

judgment may be entered against you for the whole claim, and the property, described in the claim be sold to recover the amount thereof.

Witness the Honorable....., President Judge of our said court, this.....day of..... Anno Domini 1.....
(Seal) Prothonotary.

The claimant, when he filed his praecipe for the writ of scire facias, may direct the prothonotary to add and insert the names of any persons whom the claimant may know to have an interest in the premises, and the scire facias shall be issued containing such additional names. But the parties to the claim may agree upon an amicable scire facias, upon such terms as may be agreed upon, with the same effect as if a scire facias, in the form aforesaid, had been duly issued, served, and returned; or the defendants, or any of them, may waive the issue of a scire facias, and appear with like effect as if the scire facias had been issued and served.

Sec. 9, Act of May 24, 1921, P. L. 1089.

1616. The sheriff to whom the scire facias is given for service shall add to the writ, as parties defendant, all persons, other than those named therein, who may be found in possession of the property described or any part thereof; and, in case no one is in possession, he shall post a true copy of the writ on the most public part of said property; and he shall add to the said writ the names of any persons, not already named therein, whom he may ascertain to have an interest in the property described or any part thereof; which writ shall then be further served as follows:

(a) By serving, as in the case of a summons, such of those named in the writ or added thereto as may be found in the county in which the writ issued; and

(b) Where the sheriff has information that those named in the writ or added thereto, or any of them, may be found in any other county of this Commonwealth, the said persons shall be served, as in case of a summons, by the sheriff of the county in which the said defendants or any of them may reside, he being deputized for that purpose by the sheriff of the county in which the writ issues; and

(c) In case any of those named in the writ or added thereto cannot be found, or their residences within this Commonwealth are unknown, or in case they reside without the Commonwealth, the said writ may be served by advertising a copy thereof or a brief notice of the contents of the same, once a week for three successive weeks, in one newspaper of general circulation in the county and in the legal periodical, if any, designated by the court for that purpose: Provided, however, That any defendant may accept service of said writ, in person or by counsel, with the same effect as if duly served therewith by the sheriff.

Where the said writ or the brief notice of the contents thereof have been advertised as aforesaid, the same shall have the same effect as if the writ had been personally served; and all those named therein as to whom publication has been made shall file their affidavit of defence, as required by the said writ, within fifteen days after the date of the last weekly advertisement of the said writ. Service of any such writ may be made at any time within three months from the date on which it was issued, but it shall be served and returned at the earliest date possible, and the plaintiff may require its return at any time, whether or not it be actually served.

Sec. 10, Act of May 24, 1921, P. L. 1089.

1617. If no affidavit of defence be filed within the time designated, judgment may be entered and damages assessed by the prothonotary by default for want thereof. Such assessment shall include a five per centum fee for collection to plaintiff's attorney, not exceeding, however, twenty dollars. If an affidavit of defence be filed, a rule may be taken for judgment for want of a sufficient affidavit of defence, or for so much of the claim as is insufficiently denied, with leave to proceed for the residue. The defendant may, by rule, require the plaintiff to reply, under oath or affirmation, to the statements set forth in the affidavit of defence; and, after the replication has been filed, may move for judgment on the whole record.

Sec. 11, Act of May 24, 1921, P. L. 1089.

1618. Tax claims shall be prima facie evidence of the facts averred therein in all cases; and the averments in such claims shall be conclusive evidence of the facts averred therein, except in the particulars in which those averments shall be specifically denied by the affidavit of defence or amendment thereof duly allowed. A compulsory nonsuit upon trial shall be equivalent to a verdict for defendant, whether the plaintiff appeared or not. If plaintiff recovers a verdict upon trial in excess of the amount admitted by the defendant in his affidavit of defence or pleadings, he shall be entitled to an attorney's fee for collection equal to five per centum of such excess, but not exceeding fifty dollars.

Sec. 12, Act of May 24, 1921, P. L. 1089.

1619. The judgment upon such claim may be revived by writ of scire facias in the following form:

The Commonwealth of Pennsylvania, to C. D. and E. F., Greeting:
Whereas, A. D., claimant, on the.....day of.....
Anno Domini 1....., recovered judgment in the sum of.....
dollars against you, that the following described property be sold
to satisfy the same:

(Here describe property in full.)

And whereas, We have been given to understand that though judgment, as aforesaid, was rendered, yet the amount thereof is still due and unpaid, and remains as a lien against said property; Now, you are hereby notified to file your affidavit of defence to A. B.'s claim upon said judgment, if any defence you have, in the office of the prothonotary of said court, within fifteen days after service of this writ upon you. If no affidavit of defence be filed within that time, said judgment may be revived against you for the amount set forth, with interest from the time of its recovery, and said property be sold to recover the whole thereof.

Witness the Honorable.....President Judge of our said court, this.....day of....., Anno Domini 1....

(Seal) Prothonotary.

But the parties to the judgment may agree upon an amicable scire facias to revive, or to an amicable judgment of revival, upon such terms as may be agreed upon, with the same effect as if a scire facias in the form aforesaid had been duly issued, served, and returned.

Sec. 13, Act of May 24, 1921, P. L. 1089.

1620. Said writ of scire facias shall be served, and the proceedings thereon shall be conducted, as to persons who are found by the sheriff, in the manner hereinbefore provided for the original scire facias sur claim, but, in any and all events, two returns of nihil habet to the writs to revive shall be equivalent to personal service upon the defendants. The practice and procedure following said scire facias to revive, so far as applicable, shall be the same as in the case of the original scire facias to collect the claim.

Sec. 14, Act of May 24, 1921, P. L. 1089.

1621. All judgments for the plaintiff, whether on the original scire facias or any scire facias to revive, shall be de terris only, and shall be recovered out of the property bound by the lien and not otherwise; but the costs, whether as against the plaintiff or the defendant actually defending against the claim, may be recovered by execution as in personal actions.

Sec. 15, Act of May 24, 1921, P. L. 1089.

1622. After the expiration of twenty days from the recovery of judgment, whether on the original scire facias or any scire facias to revive, except in cases where the property named is essential to the business of a quasi public corporation, the court shall, upon the petition of the plaintiff, appoint a sequestrator of the rents, issues, and profits of the property bound by the judgment, unless, in the meantime, an appeal be taken and approved security given to operate as a supersedeas. If the owner against whom the judgment is entered

be in possession of the property sequestered, or the party in possession refuse to pay a fair rent, the court shall, upon petition filed and served, grant a rule, and, if it be made absolute, award a writ, in the nature of a writ of habere facias possessionem, directed to the owner, commanding him to deliver such possession to the sequestrator within fifteen days thereafter, unless such property be occupied by the owner and his family for a home, in which case he shall be entitled to retain possession for a period of three months from the time the petition was served upon him.

Sec. 16, Act of May 24, 1921, P. L. 1089.

1623. Every claim filed, scire facias issued, verdict recovered, and judgment entered, in accordance with the provisions of this act, shall be docketed in appropriate dockets, and, except as hereinafter provided, shall be entered upon the judgment index of the court. When a claim is stricken off or satisfied, the name of a defendant stricken out, a scire facias discontinued or quashed, or a verdict or judgment stricken off or satisfied, a note thereof shall be made on such docket or dockets: Provided, however, That in counties in which the filing of liens for county taxes was authorized by law prior to the passage of this act, the method of filing, entering, docketing, and indexing liens for county, road, poor, and other taxes assessed in such counties, shall remain and be continued thereafter in the same manner and form as in use prior to the passage of this act.

Sec. 17, Act of May 24, 1921, P. L. 1089.

1624. It shall be the duty of the prothonotaries of the courts of common pleas to keep a locality index, in which shall be entered all tax claims hereafter filed, and, upon any written order therefor, they shall give a certificate of search, showing all the claims filed against any property. For so doing they shall receive the sum as provided by the various prothonotories' fee bills.

Sec. 18, Act of May 24, 1921, P. L. 1089.

1625. At any time before the property is sold, approved security may be entered for a stay of proceedings until the expiration of one year after the date of filing the claim. The entry of such security by the owner, before the entry of judgment on the claim, shall be equivalent to an admission by him that the property is liable for the claim. After the stay has expired, the claimant may proceed upon the claim and the bond given, separately or simultaneously.

Sec. 19, Act of May 24, 1921, P. L. 1089.

1626. Execution upon any judgment recovered upon any such claim, except where the property named is essential to the business

of a quasi public corporation, shall be by writ of *levari facias*, in the following form:

The Commonwealth of Pennsylvania, to the Sheriff of.....
County, Greeting:

Whereas, A. B., claimant, on the.....day of.....
....., Anno Domini 1....., recovered judgment in the
sum of.....dollars, with interest from the.....day
of....., Anno Domini 1....., and the costs amounting to
.....dollars. in our court of common pleas of
said county of....., term....., number.....
M. L. D., against C. D. and E. F., that the following described prop-
erty in your bailiwick be sold to satisfy the same, namely:

(Here describe the property in full.)

Now, this is to command you that you expose the said property
to sale, by public vendue and outcry, after due advertisement ac-
cording to law; and that return of said sale, with the moneys
realized thereby and this writ, you make to our said court on the
.....day of....., Anno Domini
1.....,

Witness the Honorable....., President Judge
of our said court, this.....day of.....,
Anno Domini 1.....

Advertisement of such sale shall be made, and the deed to the
purchaser shall be executed, acknowledged, and delivered, as in
other real estate sales by the sheriff.

Sec. 20, Act of May 24, 1921, P. L. 1089.

1627. The plaintiff in any judgment recovered on a tax claim may,
upon paying the sheriff's costs, fix an upset price to be realized at
any sale under such judgment, sufficient to pay all tax claims and all
accrued but unfilled tax claims in full. No sale shall be made on a
judgment recovered on a tax claim except for a sum sufficient to pay
all tax claims in full, except as hereinafter provided, and the plain-
tiff in such judgment may purchase the property at such sale for that
sum, if no one bids a higher price therefor.

Sec. 21, Act of May 24, 1921, P. L. 1089.

1628. Where judgment is recovered upon any claim, the prop-
erty named in which is essential to the business of a quasi public
corporation, the claimant shall have execution thereupon as in other
cases of judgments against such corporations. Upon the distribution
of any fund realized by a sale of the franchises and the whole or any
part of the assets of the corporation, the court shall determine the
actual value of the property bound by the lien, and the claim shall

be preferred with such other claims, to the extent of the value thus determined.

Sec. 22, Act of May 24, 1921, P. L. 1689.

1629. The lien of a tax claim shall not be divested by any judicial sale of the property liened where the amount due is indefinite or undetermined or where the same is not due and payable; nor shall the lien of a tax claim be divested by any judicial sale of the property liened as respects so much thereof as the proceeds of such sale may be insufficient to discharge; nor, except as hereinafter provided, shall a judicial sale of the property liened, under a judgment obtained on a tax claim, discharge the lien of any other tax claim than that upon which said sale is had except to the extent that the proceeds realized are sufficient for its payment after paying the costs and expenses of the sale and of the writ upon which it was made and any other prior tax claims to which the fund may first be applicable. On any such sale being made, all tax claims shall be paid out of the proceeds thereof first, the oldest tax having priority; and mortgages, ground-rents, and other charges on, or estates in, the property, which were recorded or created where recording is not required, before any tax other than for the current year accrue, shall not be disturbed by such sale, unless a prior lien is also discharged thereby. In case the property be not sold for a sum sufficient to pay all tax claims, together with the costs thereon, the plaintiff in any such claim may postpone the sale without payment of costs, and file his petition, setting forth that more than one year has elapsed since the filing of his claim, that he has exposed the property to sheriff's sale thereunder, and was unable to obtain a bid sufficient to pay the upset price in full, and that he will bid sufficient to pay the upset price; and, upon the production of searches or a title insurance policy, showing the state of the record and the ownership of the property, and of all tax claims, mortgages, ground-rents, or other charges on, or estates in, the land, the court shall grant a rule upon all parties thus shown to be interested to appear and show cause why a decree should not be made that said property be sold, freed and cleared of their respective claims, mortgages, charges, and estates. If, upon a hearing thereafter, the court is satisfied that service has been made of said rule upon the parties respondent, in the manner provided in this act for the service of writs of scire facias to obtain judgments upon tax claims, and that the facts stated in the petition be true, it shall order and decree that said property be sold at a subsequent sheriff's sale, day to be fixed by the court without further advertisement, clear of all claims, liens, mortgages, charges, and estates, to the highest bidder at such sale, and the proceeds realized therefrom shall be dis-

tributed in accordance with the priority of such claims; and the purchaser at such sale shall take and forever thereafter have an absolute title to the property sold, free and discharged of all tax claims, liens, mortgages, charges, and estates of whatsoever kind, subject only to the right of redemption as provided by law.

Any person interested may, at any time before the sale, pay the petitioner the whole of his claim, with interest and costs, whereupon the proceedings on petition shall at once determine.

For the purpose of enabling the petitioner in any such proceedings to give the notice required, he may take the testimony of the defendant in the claim or any other person whom he may have reason to believe has knowledge of the whereabouts of any of the parties respondent, either by deposition, commission, or letters rogatory.

Any municipality, being a claimant, shall have the right, and is hereby empowered, to bid and become the purchaser of the property at such sale; and, while the said property so purchased is held and owned by such municipality, it shall not be subject to tax claims, unless it be redeemed by the former owner or other person having the right to redeem as provided by the act to which this is an amendment. If, however, a municipality shall become the purchaser at said sale, the former owner or other person desiring to redeem shall pay all tax claims accrued and chargeable against the property prior to the sale thereof, together with the costs and interest thereon, also all tax claims whether filed or not, which would have accrued and become chargeable against the property had the same been purchased at the sale by some party other than the municipality.

Upon the delivery by the sheriff of a deed for any property sold under a tax claim, the judgment upon which such sale was had shall thereupon and forever thereafter be final and conclusive as to all matters of defence which could have been raised in the proceeding, including payment, and no error or irregularity in obtaining or entering of such judgment shall affect the validity thereof.

Sec. 23, Act of May 24, 1921, P. L. 1089.

1630. The owner of any property sold under a tax claim, or his assignees, or any party whose lien or estate has been discharged thereby, may redeem the same, at any time within one year from the date of the acknowledgement of the sheriff's deed therefor, upon payment of the amount bid at such sale, the cost of drawing, acknowledging, and recording the sheriff's deed, the amount of all tax claims, whether or not entered as liens, if actually paid, the principal and interest of estates, and encumbrances not discharged by the sale and actually paid, the insurance upon the property, and other charges and necessary expenses on the property actually paid, less rents or

other income therefrom, and a sum equal to interest at the rate of ten per centum thereon from the time of each of such payments. If both owner and creditor desire to redeem, the owner shall have the right so to do only in case he pays the creditor's claim in full. If more than one creditor desires to redeem, the one who was lowest in lien at the time of sale shall have the prior right, upon payment in full of the claim of the one higher in lien. Within the year, one who was lower in lien may redeem from one higher in lien who has already redeemed, and the owner may redeem from him; and so on throughout, in each case by paying the claims of the one whose right was higher; and one higher in lien may redeem from one lower in lien, unless his claim is paid; but, in each case, the right must be exercised within the year.

Any person entitled to redeem may present his petition to the proper court, setting forth the facts and his readiness to pay the redemption money, whereupon the court shall grant a rule to show cause why the purchaser should not reconvey to him the premises sold; and, if upon hearing the court shall be satisfied of the facts, it shall make the rule absolute, and, upon payment being made or tendered, shall enforce it by attachment.

Sec. 24, Act of May 24, 1921, P. L. 1089.

1631. Any claim, petition, answer, replication, scire facias, affidavit of defence, or other paper filed of record, may be amended, from time to time, by agreement of the parties, or by leave of court upon petition for that purpose, under oath or affirmation, setting forth the amendment desired, that the averments therein contained are true in fact, and that by mistake they were omitted from or wrongfully stated in the particulars as to which the amendment is desired. Such amendments shall be of right, saving intervening rights, except that no amendment of the claim shall be allowed, after the time for its filing has expired, which undertakes to substitute an entirely different property from that originally described in the claim, but the description of the property may be amended so as to be made more accurate, as in other cases of amendment. The court may, for cause shown and filed of record, enlarge the time for filing the affidavit of defence, answer, or replication, for issuing a scire facias, or for entering security, by rule or special or standing order; and any judgment by default may be opened by the court, upon cause shown by interveners or other defendants, as in other cases; but no enlargement of the time for issuing a scire facias shall extend the same beyond the time herein provided for preserving or retaining the lien thereof.

Sec. 25, Act of May 24, 1921, P. L. 1089.

1632. Any rule granted under the provisions of this act may be made returnable at such time as the court may direct either therein or by rule of court or by special or standing order. All petitions, answers, and replications shall be under oath or affirmation.

Answers must be filed and served within fifteen days after service of the petition, and rules and replications must be filed within fifteen days after service of the last of the answers. Replications must be confined to a reply to new matter set forth in the answers. The facts averred by either party and not denied in the answer or replication of the other shall be taken as true in all subsequent proceedings in the cause, without the necessity for proof thereof, unless amended as herein set forth. Any fact necessarily found by the court in finally determining a rule shall also be taken as true in all subsequent proceedings in the cause, without the necessity for proof thereof, unless either party, by writing filed and served at least ten days prior to the time fixed for trial, requires that it be submitted to the jury.

Sec. 26, Act of May 24, 1921, P. L. 1089.

1633. Unless otherwise herein provided, all notices, petitions, and rules shall be served upon counsel for the parties interested or upon the parties themselves, in the manner bills in equity are served, or upon the owner by leaving a copy with the party in possession of the real estate, or, in default of service in any of the methods stated, then in such manner as the court shall direct.

Sec. 27, Act of May 24, 1921, P. L. 1089.

1634. Whenever security is required to be given in accordance with the provisions of this act, it may be approved by the prothonotary, subject to an appeal to the court, as in other cases. If thereafter the security be found to be insufficient, new security may be required within a given time; in default of the entry of which, the cause may proceed with the same effect as if none had been given, the sureties, however, remaining liable. By agreement of the parties, or upon approval by the court after notice, new security may be entered in lieu of that originally taken, and an exonerator entered on the first bond; or the security given may be limited to a particular property, if clear of encumbrances and if also the security be entered as a lien upon said property.

Sec. 28, Act of May 24, 1921, P. L. 1089.

1635. From any definitive judgment, order, or decree, entered by the court of common pleas under any of the provisions of this act, or from the refusal to open a judgment entered by default, an appeal

may be taken by the party aggrieved to the Supreme or Superior Court, as in other cases.

Sec. 29, Act of May 24, 1921, P. L. 1089.

1636. This act shall apply only to claims wherein the right to file a lien accrues after the date of its approval; but the rights of other claimants under existing laws shall remain unaffected by its passage, and all claims properly filed thereunder are hereby validated.

Sec. 30, Act of May 24, 1921, P. L. 1089.

1637. Nothing contained in this act shall be construed to repeal or affect the validity of the following acts of Assembly, to wit:

An act, approved the first day of May, one thousand nine hundred thirteen (Pamphlet Laws, two hundred and eighty-five), entitled "An act providing for the return of taxes on seated lands in counties, poor districts, boroughs, incorporated towns, and townships, for county, poor, borough, town, or township taxes, respectively, and providing for the sale of such lands for taxes;" and

The act, approved the first day of June, one thousand nine hundred fifteen (Pamphlet Laws, six hundred and sixty), entitled "An act to amend an act, approved the twenty-first day of May, Anno Domini one thousand nine hundred thirteen, entitled 'An act providing for the return of taxes on seated lands in counties, poor districts, boroughs, incorporated towns, and townships, for county, poor, borough, town, or township taxes, respectively, and providing for the sale of such lands for taxes, ' so as to include school districts."

Sec. 31, Act of May 24, 1921, P. L. 1089.

1638. The act, approved the fourth day of June, one thousand nine hundred and one (Pamphlet Laws, three hundred and sixty-four), entitled "An act providing when, how, upon what property, and to what extent, liens shall be allowed for taxes and for municipal improvements, and for the removal of nuisances; the procedure upon claims filed therefor; the methods for preserving such liens, and enforcing payment of such claims; the effect of judicial sales of the properties liened, and the manner of distributing the proceeds of such sales," and the several amendments and supplements thereto, so far as the same relate or apply to tax liens and tax claims are hereby repealed. All other acts and parts of acts, except as hereinbefore provided, inconsistent with this act, be, and the same are hereby, repealed.

The repeal by this act of any act of Assembly or part thereof shall not revive any act heretofore repealed or suspended.

Sec. 32, Act of May 24, 1921, P. L. 1089.

CHAPTER XXXI.

INDEBTEDNESS. FINANCE. SINKING FUND.

Since the passage of the Act of April 20, 1874, P. L. 65, authorizing the incurring or increasing of indebtedness by municipalities, numerous curing acts have been passed validating bond issues where there was some defect, error, or omission in the procedure preliminary to the issue. The following is a complete list of these curing acts:

1639.	1897, May	19, P. L.	76
	1897, May	25, P. L.	91
	1897, June	23, P. L.	201
	1901, February	13, P. L.	8
	1901, April	19, P. L.	80
	1901, June	4, P. L.	363
	1903, April	23, P. L.	279
	1903, April	23, P. L.	282
	1905, March	10, P. L.	34
	1905, April	10, P. L.	123
	1907, May	28, P. L.	272
	1909, April	29, P. L.	280
	1909, May	8, P. L.	469
	1911, June	15, P. L.	953
	1911, June	19, P. L.	1044
	1913, March	27, P. L.	18
	1913, April	17, P. L.	76
	1913, May	1, P. L.	145
	1915, April	21, P. L.	153
	1915, May	14, P. L.	473
	1915, May	14, P. L.	493
	1917, April	26, P. L.	107
	1917, May	29, P. L.	308
	1919, March	26, P. L.	29
	1921, March	24, P. L.	50
	1921, April	12, P. L.	126
	1921, April	26, P. L.	290

(a) Constitutional Limitation on Township Indebtedness. Sinking Fund.

1640. The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as herein provided, shall never exceed seven per centum upon the assessed value of the taxable property therein, nor shall any such

municipality or district incur any new debt, or increase its indebtedness to an amount exceeding two per centum upon such assessed valuation of property, without the consent of the electors thereof at a public election in such manner as shall be provided by law.

Constitution of Pennsylvania, part of Sec. 8, Art. IX.

The Constitution divides municipal indebtedness into three classes, considered with reference to amount, the procedure to create which, in each case, being determined by the amount, as follows:

First—Municipal authorities may create or increase the indebtedness up to two per cent of the assessed value of the taxable property, excluding that indebtedness created previous to the adoption of the Constitution, so long as the total indebtedness does not exceed seven per cent. *Part of Sec. 8, Art. IX, Constitution of Pennsylvania; Borough of Millerstown v. Frederick, 114 Pa. 435; Schuldice v. Pittsburgh, 234 Pa. 90.*

Second—New debt or increase of indebtedness exceeding two per cent., but less than seven per cent. of the assessed value, is permitted only with the assent of the electors. *Part of Sec. 8, Art. IX, Constitution of Pennsylvania.*

Third—Where the debt is over seven per cent. of the assessed valuation it may be increased to ten per cent. with the assent of "Three-fifths of the electors voting at a public election": *Part of Sec. 15, Art. IX, Constitution of Pennsylvania.*

Again there are two classes of indebtedness, considered with reference to the method of their creation, recognized in the Constitution, one called for convenience "councilmanic," which is created without the assent of the electors, and another called "electoral," which must be authorized by the electors. Where the total indebtedness does not exceed seven per cent. the municipal authorities can, without vote of the electors, create or increase the "councilmanic" debt to two per cent. of the assessed valuation of the taxable property. *Keller v. Scranton, 202 Pa. 586.* Where the debt is more than two per cent. and a part of the debt had been duly authorized by a vote of the electors, such part may be deducted from the gross amount, and the remainder, if under two per cent. of the assessed value, may be increased to two per cent. without special authorization by the electors. *Keller v. Scranton, 202 Pa. 586.*

Where two or more municipalities unite and the act under which they unite transfers liability for preexisting debts from the respective units to the consolidated municipality, the status of the debts of the separate municipalities remain the same as before the consolidation, so that the debt of a unit, which was councilmanic, becomes a councilmanic debt of the consolidated municipality, and the debt of a unit which was electoral, becomes an electoral debt of the consolidated municipality. *Troop v. Pittsburgh, 251 Pa. 172.*

The fact that the people vote to permit the funding of an old debt incurred without their consent does not transfer the debt from the councilmanic to the electoral class. While both councilmanic and electoral bonds must be paid by the tax payers, yet, in determining the amount of a municipality's councilmanic debt, bonds representing the electoral debt, or cash held for their redemption, cannot be deducted in computing debt created by authority of councils only. *Schuldice v. Pittsburgh, 251 Pa. 28.*

A school district cannot incur an indebtedness in excess of two per centum upon the assessed valuation of the property of the district without the

assent of the electors thereof. *Briel, et al. v. Karthaus Township School District*, 22 D. R. 511.

A contractor cannot allege ignorance of the indebtedness of a school district, and where his contract offends the constitutional inhibition, he is presumed to know that the contract is illegal and not capable of enforcement. *Kreusler v. McKees Rocks School District*, 256 Pa. 281.

Bonds issued by a municipality to purchase a water works, secured solely by the water works without any further liability on the part of the municipality, will constitute an indebtedness forbidden by this section of the constitution, if the aggregate of such bonds taken with the prior municipal indebtedness amounts to more than seven per cent. of the taxable property of the municipality. *Lesser v. Warren Borough*, 237 Pa. 501, affirming 21 D. R. 578; 60 P. L. J. 619; 3 M. L. R. 153.

The validity of a municipal contract, in so far as it relates to an increase of the municipal debt beyond the constitutional restriction, must be determined as of the time it was made. Where there are bona fide outstanding debts due the municipality, and revenues which are not necessary with which to meet current expenses during the year, deduction of the amounts thereof may be made under the provisions of the Act of April 20, 1874, P. L. 65, in ascertaining the net indebtedness. *Yates v. Conneville Borough*, 40 Pa. C. C. 33, s. c. 60 P. L. J. 438; 4 M. L. R. 26; 21 D. R. 1048.

A contract for the erection of a school building at a price which in addition to previous existing indebtedness would create a total debt in excess of two per cent. of the assessed valuation of the property of the school district will be enjoined as an illegal increase of indebtedness, although the manner of payment is limited to available funds of current revenues as they may arise from a special tax levy or otherwise. *McKinnon v. Mertz*, 225 Pa. 85, affirming 56 P. L. J. 195.

A contract by which a municipality obligates itself to pay money to a contractor for a public improvement is an increase of indebtedness within the meaning of the constitution. *Waters v. Tamaqua Borough*, 37 Pa. C. C. 65, s. c. 19 D. R. 1075; 5 Sch. 148; 2 M. L. R. 15.

The increase of two per cent. authorized by this section may not be transcended except by a popular vote, and this, whether the increase has been made by successive additions, each less than two per cent. or at any one time and by one municipal act alone. *Houston v. Lanc.*, 191 Pa. 143, affirming 15 Lanc. L. R. 177; 8 D. R. 19.

A municipal contract cannot be enforced where it appears that the contract if enforced would result in an increase of indebtedness to an amount exceeding two per centum upon the assessed valuation of property without the assent of the electors. *O'Malley v. Olyphant*, 198 Pa. 525.

Debt and indebtedness in this section are not used in any technical way, but in their broad general meaning of all contractual obligations to pay in the future for considerations received in the present. Unliquidated damages to land owners from a public improvement are a debt within this meaning. *Keller v. Scranton*, 200 Pa. 130; see also *Lesser v. Warren Borough*, 237 Pa. 501.

Where the indebtedness of a city exceeds the limit by this section of the constitution, it cannot create a new debt. If the contracts and engagements of municipal corporations do not overreach their current revenues, no objections can lawfully be made to them, however great the indebtedness of such municipalities may be, for in such case their engagements do not

extend beyond their present means of payment, and so no debt is created. *Appeal of City of Erie*, 91 Pa. 398.

The municipal authorities may increase the debt from time to time until two per centum has been added, provided the original debt, with the increase, does not exceed seven per centum. After the two per centum has been added there can be no further increase without the vote of the people. *Pike County v. Rowland*, 94 Pa. 238.

1641. Any of the said municipalities or counties may incur indebtedness in excess of seven per centum, and not exceeding ten per centum, of the assessed valuation of the taxable property therein, if said increase of indebtedness shall have been assented to by three-fifths of the electors voting at a public election, in such manner as provided by law.

Constitution of Pennsylvania, part of Sec. 15, Art. IX.

The term "municipalities" as used in this section does not include the city of Philadelphia.

This section does not authorize the increase of the indebtedness of school districts to ten per centum of the valuation of the taxable property therein, but it would seem to apply to townships: *Long v. Cheltenham Township School District*, 269 Pa. 472.

See section 1650.

1642. No debt shall be contracted or liability incurred by any municipal commission, except in pursuance of an appropriation previously made therefor by the municipal government.

Constitution of Pennsylvania, Sec. 2, Art. XV.

1643. Any county, township, school district or other municipality incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.

Constitution of Pennsylvania, Sec. 10, Art. IX.

This section does not apply to the incidental and ordinary expenses of making and repairing township roads. *Lehigh Coal and Navigation Company's Appeal*, 112 Pa. 360.

A municipality will not be permitted to deny its liability upon bonds on the ground that no tax had been actually levied or assessed for their payment, where the record shows that the statement filed by the clerk in the office of the court of quarter sessions, in advance of the issue, declared unqualifiedly that such a tax had been levied. *Bell v. Waynesboro*, 195 Pa. 299.

Municipal indebtedness as used in this section is such indebtedness as may arise from some contract of the municipality, and which, being in excess of the current revenue, is to be interest bearing, for some definite period. *Davis v. Doylestown*, 3 Pa. C. C. 573.

Borrowing money with which to pay off a valid existing indebtedness, thus merely exchanging one creditor for another, is not prohibited by this section of the constitution. *Hempfield Township Supervisors*, 36 Pa. C. C. 532; *s. c.* 11 Dcl. 188; 57 P. L. J. 235.

If a municipality at the time of making a contract levies a tax in good faith supposed to be adequate to meet it, but on account of unforeseen oc-

currences the result is an insufficient fund, it cannot be held that the contract would thereby be made bad. *Potters National Bank v. Ohio Township*, 260 Pa. 104.

This section does not apply to the case of a municipality incurring a lawful indebtedness and intending to pay at once by levying a tax, or with money then in its treasury. Within the constitutional limit, debts within the lawful power of a municipality to incur may be contracted without providing for a direct annual tax, unless payment of such indebtedness is deferred to a fixed future period: *Com. v. Straban Township*, 45 Pa. C. C. 85, s. c. 19 Dauphin 302.

When a school district enters into an agreement with a contractor for the construction of a school house, it incurs an indebtedness, the payment of which must be provided for at or before its creation. The absence of such provision makes the contract, as between the parties to it, unlawful and void: *Spatz v. School Districts of Heidelberg and Robesonia*, 25 D. R. 452; s. c. 7 Berks 222.

(b) Procedure to Incur or Increase Township Indebtedness. Enabling Legislation.

1644. Whenever the debt of any county, city, borough, township, school district or other municipality or incorporated district within this Commonwealth shall be equal to seven per centum upon the assessed value of the taxable property, as fixed by the last preceding assessed valuation therein, it shall be unlawful to increase the same, and all such increase shall be void, and any obligation issued for such increase, or any part thereof, shall be of no binding force upon such municipality or district; and each of the officers thereof wilfully authorizing such increase, or executing any obligation therefor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding ten thousand dollars, and undergo an imprisonment not exceeding one year, or either, at the discretion of the court trying the same: Provided, That any city, the debt of which now exceeds seven per centum of such assessed valuation, may, under authority of law to be hereafter enacted, increase the same three per centum in the aggregate at any one time upon such valuation.

Sec. 1, Act of April 20, 1874. P. L. 65.

The entire indebtedness which may be created by a municipality under the constitution, whether created before or since its adoption, is limited to seven per centum of the assessed value of the taxable property: *Schuldice v. Pittsburgh*, 234 Pa. 90.

The existing debt is ascertained by subtracting from the total indebtedness the amount of the certificates of the funded debt held in the sinking fund: *Brooke et al. v. City of Philadelphia et al.* 162 Pa. 123; *Bruce et al. v. Pittsburgh et al.* 166 Pa. 152, and any cash held therein, *Schuldice v. City of Pittsburgh*, 251 Pa. 28; 234 Pa. 90.

The issuance of bonds for the purpose of funding or refunding a debt previously created and existing is not an increase of indebtedness, but merely a continuation thereof: *Schuldice v. City of Pittsburgh*, 251 Pa. 28.

It is lawful for county commissioners to make temporary loans as the necessities of the county may require to meet the usual and ordinary expenses of the county, provided they borrow no more than they can repay out of the current revenue of the county available within the year in which such money is borrowed: *Commissioners of Schuylkill Co. v. Snyder*, 20 Pa. C. C. 649; see also *Brown et al. v. City of Corry, et al.* 4 D. R. 645; see *Snyder et al. v. Commissioners of Schuylkill Co.*, 190 Pa. 440.

Additional power is conferred by this act and the constitution to increase municipal indebtedness and to levy additional taxation, without any necessity for repealing pre-existing limitations of the tax rate for ordinary municipal purposes: *Millvale Borough, appeal of Howard et al.*, 162 Pa. 374.

See also notes to Sec. 5 of this act, *infra* Sec. 1652.

1645. Any county, city, borough, school district, township of the second class, or other municipality or incorporated district, may incur debt or increase its indebtedness to an amount in the aggregate not exceeding two per centum upon the assessed value of the taxable property therein, as fixed and determined by the last preceding assessed value thereof; and the corporate authorities of such municipality may, by a vote thereof, duly recorded upon its minutes, authorize and direct the incurring or the increase of such debt to the amount aforesaid; and may issue coupon bonds or other securities therefor, in sums not less than one hundred dollars each, bearing interest at a rate not exceeding six per centum per annum, payable semi-annually, and the principal thereof reimbursable at a period not exceeding thirty years from the date at which the same is authorized; and an annual tax, commencing the first year after such debt shall be increased or incurred, sufficient for the payment of the interest thereon, and the principal of such debt within a period not exceeding thirty years from the date of such increase, shall be forthwith assessed. Before issuing any such obligation or security, it shall be the duty of the principal officer or officers of such municipality or incorporated district to prepare a statement showing the actual indebtedness of such district, the amount of the last preceding assessed valuation of the taxable property therein, the amount of debt to be incurred, the form, number and date of maturity of the obligations to be issued therefor; and he shall make and append thereto his oath or affirmation of the truth of the facts therein stated, and shall file the said statement in the office of the clerk of the court of quarter sessions of the proper county; upon failure so to do, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished as provided in the first section of this act. Certified copies of the record of such statement, under the seal of said court, shall be competent evidence in all the courts of this Commonwealth: Provided, That the bonds shall not be sold at less than their par value.

Sec. 2, Act of April 20, 1874, P. L. 65, as amended by Sec. 1, Act of April 13, 1897, P. L. 17, and Sec. 1, Act of April 28, 1915, P. L. 195.

See Sec. 1640 with notes.

Upon a taxpayer's bill to enjoin a municipality from borrowing money under an ordinance of council the burden is upon the plaintiff to show (1) that the total amount of net increase of debt exceeds two per centum of the assessed valuation of taxable property; (2) that the power of councils to increase the indebtedness without a vote of the electors has been exhausted; (3) that the proposed loan exceeds the limit provided by Art. IX, Sec. 8, of the constitution; (4) that the loan cannot be made without a prior vote of the electors; and (5) that no provision has been made for repayment, and it cannot be repaid out of current revenues: *Alexander v. City of Phila. et al.*, 17 D. R. 799.

The municipal authorities have the right to borrow without the assent of the electors two per centum of the assessed valuation, so long as the total indebtedness is less than seven per cent., excluding any indebtedness existing prior to the adoption of the constitution, and this exclusion applies to refunding bonds issued since that time to take the place of bonds outstanding when the constitution went into effect: *Schuldice v. Pittsburgh*, 234 Pa. 90, affirming 59 P. L. J. 192.

A municipality cannot increase its indebtedness without the consent of the electors in such an amount that the proposed increase added to the debt previously incurred amounts to more than two per centum: *Appeal of the City of Wilkes-Barre*, 109 Pa. 554, but this would not seem to include debts existing at the time of the adoption of the constitution, and the Act of April 20, 1874, P. L. 65: *Borough of Millerstown v. Frederick*, 114 Pa. 435.

Where the debt of a municipality is more than two per cent of the assessed value of taxable property therein, and it appears that a part of the debt had been duly authorized by vote of the electors, such part may be deducted from the gross amount, and the remainder, if under two per cent of the assessed value, may be increased to two per cent, without special authorization by the electors: *Keller v. Scranton*, 202 Pa. 586.

In order to find whether or not the indebtedness of a municipality has reached the limit of two per centum of its assessed valuation beyond which a further increase is prohibited without the assent of the electors, it is improper to compute the increase by subtracting from the present indebtedness the indebtedness in 1874. When the difference between the new debt incurred since 1874 and the amount of such debt paid off and placed in the sinking fund is more than the said two per cent. limit, no more indebtedness can be incurred without the consent of the electors; nor can that portion of the debt incurred since 1874 which was incurred with the assent of the electors be subtracted from the increase to bring it within the said two per cent. limit: *Houston, et al. v. City of Lancaster*, 15 Lanc. L. R. 177, affirmed in 191 Pa. 143.

In determining the percentage of the loan, the borough authorities are not required to go behind the face of the last assessment: *Appeal of Wm. H. Brown, et al.*, 111 Pa. 72.

The fact that the people vote to permit the funding of an old debt incurred without their consent does not transfer the debt from councilmanic to the electoral class: *Schuldice v. Pittsburgh*, 251 Pa. 28.

It is not necessary that the loan should be issued redeemable by annual instalments. The intent of the act is that a certain sum shall be annually raised in anticipation of payment which may be made in the redemption of the bonds annually or paid into the sinking fund for the payment of the bonds at the expiration of a term of years: *Bruce et al. v. Pittsburgh et al.*

166 Pa. 152. The manner of payment is left to the municipal authorities, and they are not restricted to any particular method of financing the debt: *Blamere v. Borough of Parsons, et al.*, 17 Luz. L. R. 417, s. e. 7 M. L. R. 175.

Before the bonds are issued, an annual tax must be assessed to pay the indebtedness, but the first year in which the same can be collected is that which succeeds the incurring of the indebtedness, that is, the issue and sale of the bonds, this period of time being the next fiscal year or the next tax year, but not the next civil year: *D. L. & W. R. R. Co. v. Scranton City*, 5 Pa. C. C. 437, s. e. 5 Kulp, 67.

An ordinance providing for the increase of the municipal debt is invalid which does not provide for the levy and collection of an annual tax sufficient to pay the principal with interest within thirty years: *Bruce et al. v. Pittsburgh et al.* 166 Pa. 152.

The statement filed by the municipal authorities with the clerk of the court of quarter sessions is to give notice of the proposed loan. A remonstrance is not the proper method of registering objections to the loan or of raising any question as to the legality of the same, and will be stricken off as irrelevant matter: *Laird v. Greensburg*, 8 Pa. C. C. 621.

The statement provided for by this section must be filed before the securities are sold, which represent the proposed increase of debt: *Com. ex rel. Lyon v. Ripple, Mayor*, 4 Kulp 59.

There is no presumption that officers of a municipality acting under oath of office, have not, in increasing the municipality's indebtedness, made the statement required by this section: *Safe Deposit Bank of Pottsville v. County of Schuylkill*, 190 Pa. 188.

An indebtedness of a school district for materials supplied in the erection of a school house is not within the provisions of this act nor of Sec. 8, Art. IX, of the constitution, if at the time the contract is made, the district has a surplus of assets over liabilities, though subsequent contracts for the completion of the building extended the indebtedness to an amount beyond two per cent. of the assessed valuation, there being no proof that the directors then had in contemplation such an increase of the debt: *School District of Denison Township, v. Shortez, et al.*, 2 Penny. 231.

The assessed valuation is the valuation for taxable purposes, and if taxes for school purposes in a city are legally levied upon the city valuation, then the city valuation is the proper valuation upon which to base an increase of indebtedness: *Com. v. Schmitz*, 18 D. R. 861, s. e. 56 P. L. J. 31.

Where a municipal corporation undertakes that which does not necessarily appertain to the municipality, it must have express power to do so, but the power is implied where it undertakes to do that which is necessary. The power to create or to increase debt to an amount not exceeding two per centum is granted in this section: *City of Williamsport v. Com.* 84 Pa. 487.

As to loans for temporary or other purposes, this section does not provide for a definite statement of purpose as is required to give notice to the public by section three of this act authorizing a loan only upon direct vote of the people. The practice, however, is, as it ought to be, to set out in the ordinance the purpose or purposes for which the indebtedness is to be incurred, even when the loan is for temporary purposes and authorized by ordinance without a vote of the people. *Elliott v. Philadelphia*, 229 Pa. 215.

The municipal authorities are not obliged to advertise for bids before issuing bonds: *Pearson v. Kantner et al.* 8 Sch. 63.

Where bonds were issued to provide for the payment of an existing legal indebtedness, and the constitutional and statutory requirements were not followed, the bonds are void, but since the money borrowed is applied to an existing valid indebtedness, thus merely exchanging one creditor for another, the borough is liable for the money and recovery may be had against it in a suit on the contract. *Borough of Rainsburg v. Fagan*, 127 Pa. 74, s. c. 12 M. L. R. 177.

1646. The indebtedness of any county, city, borough, township, school district, or other municipality or incorporated district in this Commonwealth, may be authorized to be increased to an amount exceeding two per centum, and not exceeding seven per centum, upon the last preceding assessed valuation of the taxable property therein, with the assent of the electors thereof, duly obtained at a public election to be held in the said district or municipality. Whenever the corporate authorities of any county, city, borough, township, school, or other municipality or incorporated district, by their ordinance or vote shall have signified a desire to make such increase of indebtedness, they shall give notice during at least thirty days, by weekly advertisements in the newspapers, not exceeding three in said district, and, if no newspaper be published therein, by at least twenty handbills posted in the most public parts thereof, of an election to be held at the place or places of holding the municipal elections in said district or municipality, on a day to be by them fixed, for the purpose of obtaining the assent of the electors thereof to such increase of indebtedness.

Said notice shall contain a statement of the amount of the last assessed valuation, of the amount of the existing debt, of the amount and percentage of the proposed increase, and for the purpose for which the indebtedness is to be increased. Such election shall be held at the place, time and under the same regulations as provided by law for the holding of municipal elections, and it shall be the duty of the inspectors of such election to receive tickets, and to deposit said tickets in a box provided for that purpose, as is provided by law in regard to other tickets received at said election; and the tickets so received shall be counted and a return thereof made to the clerk of the court of quarter sessions of the proper county, duly certified as is required by law, together with a certified copy of the ordinance and the advertisement; and the said clerk shall make a record of the same, and furnish a certified copy thereof, under seal, showing the result, to the corporate authorities of such municipality, and the same shall be placed on record upon the minutes thereof. The corporate authorities of such municipality, shall in all cases, fix the time of holding such election on the day of the municipal or of the general election, unless more than ninety days elapse between the

date of the ordinance or vote desiring such increase and the day of holding the said municipal or general election. If any other day be fixed for such election, the expense of holding the same shall be paid by the municipality for the benefit of which it shall be held. In receiving and counting and in making returns of the votes cast the inspectors, judges, and clerks of said election shall be governed by the laws of this Commonwealth regulating municipal elections; and the vote shall be counted by the court, as is now provided by general laws governing municipal elections, and all the penalties of the said election laws for the violation thereof are hereby extended to, and shall apply to the voters, inspectors, judges, and clerks voting at and in attendance upon, the elections held under the provisions of this act.

Sec. 3, Act of April 20, 1874, P. L. 65, as amended by Sec. 1, Act of June 9, 1891, P. L. 252, and Sec. 1, Act of May 1, 1909, P. L. 317.

The provisions of this section for increasing the indebtedness beyond two per cent of the assessed valuation must be strictly complied with: *Witherop v. Titusville School Board et al.*, 7 P. C. C. 451.

A court of equity will restrain the carrying into effect of a borough ordinance for an election to be held by citizens of the borough where the ordinance provides for the submission of several distinct questions, one of which is the funding of an old debt, and compels the citizens to vote for the whole or none.

The only question that can be submitted to the people under this act is that of increasing of the public debt of the municipality. A bill in equity can be maintained by a taxpayer and citizen of a borough to restrain the carrying into execution of such an ordinance, which is illegal: *Bloomsburg Town Election Case*, 18 Pa. C. C. 449, s. c. 4 D. R. 671.

Before the authorities of a municipality can authorize an election to pass upon an increase in municipal indebtedness to an amount exceeding two per centum upon the assessed valuation of taxable property they must first act by giving expression, by "ordinance or vote," to their desire for the increase: *Hoffman v. Pittsburgh*, 229 Pa. 36.

This is mandatory, and is not complied with by an ordinance in which the councils both ordain "that the debt of the said city shall be increased in the sum of eight million dollars," and direct that an election shall be held: *Bullitt v. Philadelphia*, 230 Pa. 544, affirming 19 D. R. 1083; (but see note following.)

It is not necessary for a borough council to express its "desire" to increase the indebtedness of the borough by a separate ordinance, as preliminary to submitting the question to a vote of the electors. The question of "desire" may be included in the same ordinance in which the election and notice are provided for: *Egan v. Claysville Borough, et al.*, 239 Pa. 259; *Storch v. Lansdowne Borough*, 239 Pa. 306.

The use of the word "desire" does not mean that only those particular individuals constituting the corporate authorities at the time of the passage of the ordinance signifying a desire to increase the debt, shall be permitted to make the increase: *Barr v. Philadelphia*, 191 Pa. 438.

No particular form or words are required in publishing notice of an election hereunder so long as the purpose and object to be accomplished are suf-

ficiently set forth and it contains the information as prescribed in this section: *Brandt v. Elizabethtown Borough School District*, 26 *Lanc. L. R.* 249.

The mandate as to notice is sufficiently complied with if notice is properly published in two newspapers and possibly in one newspaper published in English. Where the advertisement in two newspapers plainly makes up the required weekly advertisements for thirty days, it is equivalent to one complete advertisement in one newspaper and substantially, if not literally, complies with the law: *Harrisburg v. Dauphin Deposit Bank*, 12 *D. R.* 207; *s. c.* 6 *Dan. 4*. See *Witherop v. Titusville School Board et al.*, 7 *Pa. C. C.* 451.

Where there was an irregular publication in three daily newspapers, and not continuously in any one, and twelve days elapsed during which no publication of the notice appeared, the statutory requirement that notice for "at least thirty days, by weekly advertisements," is not satisfied: *Graham et al. v. City of Lebanon*, 240 *Pa.* 337.

The "statement" required to be published must comply strictly with the law. Failure to comply with this requirement in any substantial manner will invalidate the loan: *Bullitt et al. v. City of Philadelphia et al.*, No. 1, 19 *D. R.* 1083, affirmed in 230 *Pa.* 544.

Bonds issued to take up outstanding bonds and notes issued for temporary loans, where the total is in excess of two per cent of the assessed valuation, the increase of indebtedness in excess of the two per cent might be credited and authorized by an election: *Roy v. Columbia Borough*, 192, *Pa.* 146.

The electors are to assent or dissent to or from the increase of the indebtedness, not to or from the purposes to which it is to be applied and it is not necessary that they shall vote separately on each item set apart for the particular purpose for which the debt is about to be increased, several of which purposes may be included in the same loan: *Barr v. Philadelphia*, 191 *Pa.* 438.

A proposed increase of municipal indebtedness, when submitted to public vote at the regular municipal or general election, should be voted upon the general official ballot and not upon special separate ballots provided for that purpose. *School District of Kingston v. Luz. Co. et al.*, 17 *Luz. L. R. Rep.* 431, *s. c.* 6 *M. L. R.* 197.

The ballots to be used at an election to ascertain whether the indebtedness of a borough shall be increased must be official ballots furnished by the county commissioners, and must be in the form presented by the Act of April 29, 1903, P. L. 338: *McLaughlin v. Summithill Borough*, 224 *Pa.* 425; and an election to pass upon an increase of a borough's indebtedness, where the ballots were taken in the form prescribed by the Act of 1874, and its amendments, is void: *Holtzman v. Braddock*, 14 *D. R.* 547.

The laws relating to municipal elections do not require returns of a special election held to decide the matter of a proposed increase of indebtedness, to be presented to, opened and computed by the court: *Steelton Borough's Election*, 22 *Pa. C. C.* 593.

As this act provides no method for contesting the result of an election on the question of an increase of a municipality's indebtedness, there can be no contest thereof: *Wilson v. Baline, et al.* 262 *Pa.* 367.

The county is not liable for the expense of a special election held to determine whether the indebtedness of a municipality shall be increased or not. *Wilkes-Barre v. County of Luzerne*, 5 *Luz. L. R.* 75; *Cuskins v. Montour Co.* 8 *Luz. L. R.* 270.

There is no provision in the constitution or acts of Assembly that confer upon the courts the power to assume jurisdiction of a contest of a borough

election on the question of increase of indebtedness: *Fowler v. Gable*, 3 D. R. 23.

The return of a special election, held for the purpose of obtaining the assent of the electors of a school district to an increase of its indebtedness, held on a special date, not the date for holding the general municipal election for the county, is properly made to the court of quarter sessions of the county in which the school district is located. If the copy of the resolution authorizing the election, and the advertisement, are filed after the return of the election and made a part of the record it is a substantial compliance with the record: *Ehler v. School Directors of Lower Paxton Township*, 24 Dau. 262.

The provisions contained in this section constitute the only authority for municipalities to advertise or in any other manner carry on a campaign of education in regard to the determining by the vote of the electors whether the indebtedness shall be increased or not: *Kelly, Jr., v. Gumbert, et al.* 69 P. L. J. 796.

1647. Whenever, by the returns of such election, it shall appear that there is a majority voting for "no increases of debt," such increase shall not be made; nor shall any other election upon the same subject be held in that municipality for one year from the date of such preceding election. If the return of such election shall show a majority voting "that debt may be increased," the corporate authorities of the municipality may increase the same to the amount named and specified in the notice given for the holding of such election, not exceeding seven per centum of the last assessed valuation of such municipality, in the manner and subject to all the requirements provided by the second section of this act for increasing indebtedness, to an amount not exceeding two per centum of the last assessed valuation, including the amount named in the sworn statement to be filed in the office of the clerk of the court of quarter sessions of the proper county; and they shall, before issuing any obligations therefor, assess and levy an annual tax, the collection whereof shall commence the first year after the said increase, which tax shall be equal to and sufficient for and applied exclusively to the payment of the interest and the principal of such debt within a period not exceeding thirty years from the date of such increase; and the moneys arising from such tax shall be applied at such periods as the municipality may stipulate in such obligations, to the redemption at par of the said outstanding obligations according to their terms.

Sec. 4, Act of April 20, 1874, P. L. 65, as amended by Acts of April 18, 1895, P. L. 36, and May 11, 1897, P. L. 53, Sec. 1.

Under the Act of April 18, 1895, amending the fourth section of the Act of 1874, P. L. 65, it was held that a municipality could only increase its indebtedness at any one time at any one election by an amount not over two per centum by a vote of the people: *Sencer, et al. v. Ephrata Borough*, 176 Pa. 80. A subsequent amendment to this section, May 11, 1897, P. L. 53, permits any increase to be made so long as the total indebtedness does not exceed the constitutional limitation.

The provisions of this section as to the time within which an election may be held where a majority of the electors voted for "no increase of debt" has been indirectly amended by the Act of May 28, 1913, P. L. 377. See the two sections immediately succeeding.

An ordinance providing for the increase of the municipal debt is invalid which does not provide for the levy and collection of an annual tax sufficient to pay the principal with interest within thirty years: *Bruce et al. v. Pittsburgh, et al.* 166 Pa. 152.

While a given time is fixed for the payment of the debt the manner of payment is left to the municipal authorities, and they are not restricted to any particular method of financing the debt: *Blamere v. Borough of Parsons, et al.* 17 Luz. L. R. Rep. 417, s. c. 7 M. L. R. 175. While a certain sum should be raised each year in anticipation of payment it is not necessary to pay it off in annual instalments: *Bruce et al. v. Pittsburgh et al.* 166 Pa. 152.

The municipal authorities are not obliged to advertise for bids before issuing bonds: *Pearson v. Kantner et al.* 8 Sch. 63.

See also notes to sec. 7 of this act, Sec. 1659.

1648. Whereas, Section four of an act, entitled "An act to regulate the manner of increasing the indebtedness of municipalities, to provide for the redemption of the same, and to impose penalties for the illegal increase thereof," approved the twentieth day of April, Anno Domini one thousand eight hundred and seventy-four, prescribes that no other election can be held on the same subject for one year from the date of the preceding election, thus causing, in certain years, a special election or requiring the election to be postponed for another year: therefore,—

Preamble, Act of May 28, 1913, P. L. 377.

1649. Whenever an election is held to increase municipal indebtedness, and the increase is defeated by a majority vote, another election for the same purpose or on the same subjects, may be held after fifty-one weeks; and that, on the fourth day of November, Anno Domini one thousand nine hundred and thirteen, an election may be held to increase municipal indebtedness for the same purposes, or on the same subjects, as were defeated by a majority vote at the election held on the fifth day of November, Anno Domini one thousand nine hundred and twelve.

Sec. 1, Act of May 28, 1913, P. L. 377.

1650. Any of the said municipalities may incur indebtedness in excess of seven per centum, and not exceeding ten per centum, of the assessed valuation of the taxable property therein, if said increase of indebtedness shall have been assented to by three-fifths of the electors voting at a public election, in such manner as shall have been or may hereafter be provided by law for the increase of indebtedness by municipalities with the assent of the electors.

Sec. 3, Act of June 5, 1915, P. L. 846.

The term "municipalities" as used in this section does not include the city of Philadelphia.

This section was adopted to carry into effect the provisions of Sec. 5, Art. IX of the constitution, See Sec. 1641.

1651. Said municipalities shall have all the rights and powers necessary and needful to carry out the provisions of this act.

Sec. 4, Act of June 5, 1915, P. L. 846.

1652. The word "indebtedness," used in this act, shall be deemed, held and taken to include all and all manner of debt, as well floating as funded, of the said municipality; and the net amount of such indebtedness shall be ascertained by deducting from the gross amount thereof, the moneys in the treasury, all outstanding solvent debts, and all revenues applicable within one year to the payment of the same.

Sec. 5, Act of April 20, 1874, P. L. 69.

The indebtedness of a municipality, like that of an individual, is what it owes and can be called upon to pay. In determining the net amount of its indebtedness, a municipality is not entitled to deduct authorized, but unissued loans. "Solvent debts" are debts due to a municipality directly, payment of which it can enforce as one of its quick assets for the liquidation of any of its obligations. Securities other than those of the city in the sinking fund are merely an asset of the city, and do not operate to the reduction of the funded debt: *McGuire v. Philadelphia*, 245 Pa. 287; *Brooke et al. v. Philadelphia*, 162 Pa. 123.

A "temporary loan" is a "debt" or "indebtedness" unless provision is made for its payment out of the current revenues: *Alexander v. City of Philadelphia et al.*, 17 D. R. 799.

Bona fide outstanding debts due the municipality and revenues not necessary to meet current expenses during the year may be deducted in ascertaining the net indebtedness: *Yates v. Connellsville Borough*, 21 D. R. 1048, s. c. 40 Pa. C. C. 33, 60 P. L. J. 438, 4 M. L. R. 26; *Elliott v. Philadelphia*, 229 Pa. 215.

Net indebtedness is ascertained by deducting (1) bonds and cash in the sinking fund; (2) money in treasury; (3) outstanding solvent debts, and (4) revenues available within the year for the payment of indebtedness: *Snyder v. School District of Greensburg, et al.*, 15 Lack J. 317, s. c. 4 West L. J. 13.

The indebtedness contemplated under this act and Sec. 10, Art. IX of the constitution is such as may arise from some contract of the municipality itself and which is to run for some definite period and is interest bearing: *Com. v. Township of Straban*, 19 Dau. 302, s. c. 45 Pa. C. C. 85.

Temporary loans, for usual and ordinary expenses of the municipality, to be paid out of the current revenues of the year, is not "indebtedness" under this act, and its flotation does not require a proceeding hereunder: *Snyder et al. v. Commissioners of Schuylkill Co.* 190 Pa. 440, affirming 20 Pa. C. C. 649. (See latter case.)

An annual sum to be paid monthly for lighting the streets of a borough for a limited term is not incurring of a new indebtedness: *Wade et al. v. Oakmont borough et al.* 165 Pa. 479.

When the cost of municipal improvements shall be considered an indebtedness, see *Schuldice v. City of Pittsburgh* 59 P. L. J. 192, affirmed in 234 Pa. 90.

Bonds issued by a bridge company of which the municipality owns all the stock and has complete control, are properly counted as a part of the municipality's debt: *Schuldice v. City of Pittsburgh*, 251 Pa. 28.

See also notes to Sec. 1, of this act, Sec. 1644.

1653. The corporate authorities of every such municipality or district shall, at the end of their fiscal year, prepare and publish in at least two newspapers of said municipality or of the county in which the same is situate, if so many be printed therein, a statement showing in detail, the actual indebtedness, the amount of the funded debt, the amount of the floating debt thereof, the valuation of taxable property therein, the assets of the corporation, with the character and value thereof, and the date of maturity of the respective forms of funded debt thereof; and a neglect or failure so to do shall be a misdemeanor, punishable by fine not exceeding one thousand dollars.

Sec. 6, Act of April 20, 1874, P. L. 65, as amended by Sec. 1, Act of April 12, 1875, P. L. 46.

(c) Certain Bonds Not to be a Debt of Township.

(1) Constitutional Provision.

1654. No obligations which have been heretofore issued, or which may hereafter be issued, by any county or municipality, other than Philadelphia, to provide for the construction or acquisition of water works, subways, underground railways, or street railways, or the appurtenances thereof, shall be considered as a debt of a municipality, within the meaning of section eight of article nine of the Constitution of Pennsylvania or of this amendment, if the net revenue derived from said property for a period of five years, either before or after the acquisition thereof, or where the same is constructed by the county or municipality, after the completion thereof, shall have been sufficient to pay interest and sinking-fund charges during said period upon said obligations, or if the said obligations shall be secured by liens upon the respective properties, and shall impose no municipal liability. Where municipalities or counties shall issue obligations to provide for the construction of property, as herein provided, said municipalities or counties may also issue obligations to provide for the interest and sinking fund charges accruing thereon until said properties shall have been completed and in operation for a period of one year; and said municipalities and counties shall not be required to levy a tax to pay said interest and sinking-fund charges, as required by section ten of article nine of the Constitution of Pennsylvania.

until after said properties shall have been operated by said counties or municipalities during said period of one year.

Constitution of Pennsylvania, part of Art. IX, Sec. 15

(2) Enabling Legislation.

1655. Obligations which have been heretofore issued, or which may hereafter be issued by any municipality other than Philadelphia, to provide for the construction or acquisition of water-works, subways, underground railways or street railways, or appurtenances thereof, shall not be considered as a debt of the municipality, within the meaning of any act of Assembly of the Commonwealth of Pennsylvania authorizing or limiting the incurring of debt or indebtedness, or the increasing of debt or indebtedness, by any municipality, whether with or without the assent of the electors thereof, if the net revenue derived from said property for a period of five years, either before or after the acquisition thereof (or where the same is constructed by the municipality, after the completion thereof, shall have been sufficient to pay interest and sinking-fund charges during said period upon said obligations, or if the said obligations shall be secured by liens upon the respective properties, and shall impose no municipal liability.

Sec. 1, Act of June 5, 1915, P. L. 846.

1656. Where a municipality shall issue obligations to provide for the construction of water-works, subways, underground railways or street railways, or appurtenances thereof, the municipality may also issue obligations to provide for the interest and sinking-fund charges accruing thereon until said properties shall have been completed and in operation for a period of one year; and said municipality shall not be required to levy a tax to pay said interest and sinking-fund charges, until after said properties shall have been operated by the municipality during the said period of one year.

Sec. 2, Act of June 5, 1915, P. L. 846.

1657. Said municipality shall have all the rights and powers necessary and needful to carry out the provisions of this act.

Sec. 4, Act of June 5, 1915, P. L. 846.

1658. Should any section or provision of this act be held by the court to be invalid or unconstitutional, it shall not be held to affect any other section or provision of this act.

Sec. 5, Act of June 5, 1915, P. L. 846.

(d) Bond Issues to Redeem Existing Issues.

1659. The existing indebtedness of any such municipality evidenced by outstanding bonds or certificates of indebtedness heretofore issued, may be provided for as the same shall mature, by a reissue of bonds or certificates of indebtedness to the holders of said outstanding bonds or certificates, or by the issue and sale at not less than par of new bonds or certificates; and the present floating indebtedness of any such municipality, may be funded by the issue and sale at not less than par of bonds or certificates of indebtedness in sums not less than one hundred dollars each: Provided, That no such bonds or certificates shall be issued for a longer period than thirty years from the date thereof; and it shall be the duty of the proper corporate authorities of such municipality to provide for the payment of principal and interest of all such bonds, in the manner pointed out in the fourth section of this act.

Sec. 7, Act of April 20, 1874, P. L. 65.

A commission cannot be allowed for the conversion of outstanding bonds or certificates of indebtedness into a new series issued hereunder when such commission would reduce the sum received by the municipality to less than par: *City of Scranton v. Vail et al.*, 6 Kulp, 237.

Taxes levied and collected to redeem bonded indebtedness may be applied to indebtedness created subsequent, as well as that created prior, to the adoption of the construction: *Appeal of the City of Wilkes-Barre*, 116 Pa. 246.

The issuance of bonds for the purpose of funding or refunding a debt previously created and existing is not an increase of indebtedness, but merely a continuation thereof: *Schuldice v. City of Pittsburgh*, 251 Pa. 28.

Outstanding promissory notes, renewals or substitutes for temporary loans, made in earlier years, can only be legally redeemed by new loans, when this act has been complied with: *Snyder et al. v. Commissioners of Schuylkill Co.* 190 Pa. 440, affirming 20 Pa. C. C. 649. (See latter case).

A court of equity will not enjoin municipal authorities from issuing bonds for the purpose of funding floating indebtedness of the municipality where they are not charged with fraud, and there is nothing in the evidence to show that they abused or intended to abuse the discretion vested in them, or that they were seeking to increase the debt of the municipality, but simply to change the form of an already existing debt: *Snyder et al v. Commissioners of Schuylkill Co.* 190 Pa. 440, affirming 20 Pa. C. C. 649.

See also notes to Sec. 4, of this act, supra Sec. 1647.

1660. The existing indebtedness of any county, city, other than those of the first or second class, borough, school district, or other municipality or incorporated district, within this Commonwealth, evidenced by outstanding bonds, certificates, or notes issued prior to the twentieth day of April, Anno Domini one thousand eight hundred and seventy-five, may be provided for as the same shall mature by an issue to the holders of such outstanding bonds, certificates or notes, of bonds or certificates in lieu thereof, if they shall

agree to receive the same, or by the issue and sale at not less than par, of bonds or certificates in lieu of indebtedness outstanding on the said twentieth day of April, Anno Domini one thousand eight hundred and seventy-five, except as hereinafter provided: Provided, That such bonds or certificates shall bear interest at a rate not exceeding six per centum per annum, and may be issued redeemable at the pleasure of the obligors at any time fixed by them within twenty years from the date thereof; and it shall be the duty of the proper corporate authorities of such municipality or incorporated district, to assess and levy a special annual tax not exceeding five mills on the dollar on the assessed valuation thereof, immediately after the passage of this act, to pay such bonds or certificates reissued or issued and sold as aforesaid, and which shall be sufficient for, and applied exclusively to, the payment of the interest and principal of such bonds and certificates within a period not exceeding twenty years from the date of such bonds and certificates so re-issued or so issued and sold: Provided, further, That the provisions of this act shall not be so construed as to authorize a re-issue of any bonds or certificates which were issued, the legality and validity of which is now questioned by legal proceedings in any of the courts of the commonwealth; And provided further That said re-issued bonds shall not be liable to local taxation; And provided further, That this act shall apply to municipalities the amount of whose legal indebtedness is limited in their respective charters of incorporation and supplement thereto as well as those not so limited.

Sec. 1. Act of May 8, 1876, P. L. 128.

Bonds issued under this act cannot be used to redeem floating indebtedness of the municipality incurred after April 20, 1875, and all such bonds issued for such debts are illegal and void. And a commission for their handling cannot be allowed if the return to the municipality on the bonds is reduced below par: *The city of Scranton v. Vail et al*, 6 Kulp, 237.

1661. In all cases where any county, city, borough, municipality or school district in this Commonwealth has, by virtue of any general or special act of Assembly, issued bonds or other interest-bearing evidences of indebtedness, with or without interest coupons attached, to secure any indebtedness of any such county, city, borough, municipality or school district, which may have matured but remain unpaid and uncanceled or are about to mature and become payable, or whenever any county, city, borough, municipality or school district, shall have the option to redeem or pay any such bonds or interest-bearing evidences of indebtedness, or whenever holders of any bonds or interest-bearing evidences of indebtedness of any county, city, borough, municipality or school district, which may not have matured or become redeemable, are willing to sur-

render the whole or any part of such issue of bonds or interest-bearing evidences of indebtedness, it shall be lawful for any such county, city, borough, municipality or school district, for the purpose of redeeming or paying off any or all of the bonds or other interest-bearing evidences of indebtedness payable, redeemable or offered for redemption, as aforesaid, to issue and sell either registered or coupon bonds, bearing interest at a rate not exceeding the rate the issue proposed to be refunded bears, and payable at any time not exceeding thirty years after the date thereof, and not exceeding in the aggregate the amount of the bonds or other evidences of indebtedness so redeemed or paid, and the said bonds so issued or sold, in accordance with the provisions of this act, shall be exempt from taxation except for State purposes: Provided, however, That all moneys for the redemption of the issue of bonds proposed to be refunded, placed in the sinking fund if any, shall be first applied to the payment, as far as applicable, of the principal of such bonds, and the balance of such issue only shall be redeemed by the issue of new bonds.

Sec. 1, Act of April 14, 1881, P. L. 10, as amended by Sec. 1, Act of March 1, 1899, P. L. 6.

Sec. 2 of the Act of March 1, 1899, repeals Sec. 2 of the Act of April 14, 1881.

The holders of old bonds shall not be required to surrender them for new bonds except on the basis of their par value and not at a premium the new bonds may command in the market: *Lloyd v. Altoona City*, 134 Pa. 545.

(e) Townships Not to Become Stockholders in Corporations, Etc., Nor Loan Credit.

1662. The General Assembly shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.

Constitution of Pennsylvania, Sec. 7, Art. IX.

This section was intended to prevent a city from becoming jointly interested as stockholder with any company, etc. and from appropriating money or loaning its credit to any corporation or individual: *Wheeler, et al. v. Philadelphia*, 77 Pa. 338.

The absolute acquisition of the property of a company is not prohibited by this section: *Brode v. Philadelphia*, 230 Pa. 434, affirming 18 D. R. 899.

There is nothing in this section which would prevent the directors of the poor of a county from placing pauper children of their district in an incorporated home, or release them from liability for their maintenance. Such an action is not lending the credit of the municipality to or becoming a stockholder of such a corporation, but merely establishes a contractual relation between the home and the directors of the poor, for which the

latter are responsible: *Colored Children's Home v. Cambria Co. Poor District*, 72 Super. Ct. 106.

(f) Bonds Issued to be Sold to Highest Responsible Bidder.

1663. When any county, city, borough, township, school district, or other municipality or incorporated district of this Commonwealth, having authority so to do, shall borrow money and issue bonds or other securities therefor except in the case of the giving of notes for temporary loans as may be authorized by law, the authorities thereof shall sell the same to the highest responsible bidder, after public notice by advertisement, once a week for three weeks, in at least one newspaper of general circulation published in the county in which such county, city, borough, township, or school district, or other municipality or incorporated district, shall be situated: Provided, That no bid for such bonds or securities at less than their par value shall be accepted.

Sec. 1, Act of July 6, 1917, P. L. 747.

(g) Township Bonds Subject to Taxation For State Purposes.

1664. All scrip, bonds, certificates and evidences of indebtedness issued, and all scrip, bonds, certificates and evidences of indebtedness assumed, or on which interest shall be paid, by any and every private corporation incorporated or created under the laws of this Commonwealth or the laws of any other State or of the United States, and doing business in this Commonwealth; and all scrip, bonds, certificates, and evidences of indebtedness issued, and all scrip, bonds, certificates, and evidences of indebtedness assumed, or on which interest shall be paid, by any county, city, borough township, school district, or incorporated district of this Commonwealth are hereby made taxable in the year one thousand nine hundred and nineteen, and annually thereafter, for State purposes, at the rate of four mills on each dollar of the nominal value thereof: Provided, That this section shall not apply to bank notes, or notes discounted or negotiated by any bank notes, or notes discounted or negotiated by any bank or banking institution, savings institution, or trust company: And provided, That the provisions of this act shall not apply to building and loan associations, or to savings institutions having no capital stock from any taxation to which such depositors may be subject: and if at any time, either now or hereafter, any persons, individuals, or bodies corporate have agreed or shall hereafter agree to issue his, their, or its securities, bonds, or other evidences of indebtedness, clear of and free from the said four mills tax herein provided for, or have agreed or shall hereafter agree to pay the same, nothing here-

in contained shall be so construed as to relieve or exempt him, it or them from paying the said four mills tax on any of the said such securities, bonds, or other evidences of indebtedness as may be held, owned by, or owing to the said saving institution having no capital stock: And provided further, That the provisions of this act shall not apply to fire companies, firemen's relief associations, life or fire insurance corporations having no capital stock, secret and beneficial societies, labor unions and labor union relief associations, and all beneficial organizations paying sick or death benefits, or either or both, from funds received from voluntary contributions or assessments upon members of such associations, societies, or unions: And provided further, That corporations, limited partnerships, and joint-stock associations liable to tax on capital stock for State purposes, shall not be required to pay any further tax under this section on the mortgages, bonds, and other securities owned by them in their own right; but corporations, limited partnerships, and joint-stock associations holding such securities as trustees, executors, administrators, guardians, or in other manner, shall be liable for the tax imposed by this section upon all securities so held by them, as in the case of individuals: And provided further, That none of the classes of property made taxable by this section for State purposes shall be taxed or taxable for county, school, or other local purposes.

It is the intent of this act that all scrip, bonds, certificates, and evidences of indebtedness made taxable under this section are not taxable under section one (1) of the act to which this is an amendment, and that only such scrip, bonds, certificates, and evidences of indebtedness which cannot be made taxable under this section are to be taxed under section one (1) of said act.

Sec. 17, Act of June 17, 1913, P. L. 507, as amended by Act of July 15, 1919, P. L. 955.

A municipality in issuing bonds has no authority to assume the State tax where such tax together with the interest rate on the loan exceeds the sum it is authorized by law to pay for money: *Irwin et al. v. Township of Mifflin et al.* 64 P. L. J. 445, s. c. 26 D. R. 39.

1665. The tax for State purposes, imposed upon obligations of private and public corporations by section seventeen of this act, shall be collected in the same manner as the tax heretofore imposed for State purposes upon such obligations; it being the true intent and meaning of this act that the provisions of the law in force at the time of the passage of this act relating to the collection of the State tax upon such obligations shall remain unaffected by the present act. That the provisions of this section shall apply to all foreign corporations, duly registered and doing business in this State, without regard to whether the treasurers or other fiscal officers of such corporations

whose duty it may be to pay the interest on obligations of the character aforesaid may be residents or non-residents of this Commonwealth.

Sec. 18, Act of June 17, 1913, P. L. 507, as amended by Act of July 15, 1919, P. L. 958.

1666. The treasurer of each school district, county, and city, the burgess or other chief officer of each incorporated district or borough, of this Commonwealth within ninety days after the passage of this act, shall make return, under oath or affirmation, to the Auditor General of the amount of scrip, bonds, or certificates of indebtedness outstanding by said county, city, incorporated district, school district, borough, or incorporation, as the same existed on the first day of January, one thousand eight hundred and sixty-four, and of each succeeding year thereafter, together with the rates of interest thereon at each of those periods, under the penalty of five thousand dollars; the amount to be settled by the Auditor General, and the amount thereof sued for and collected as debts due by defaulting public officers are collected: Provided, That on the receipt of said returns the Auditor General shall proceed to settle the accounts of each county, city, incorporated district, school district, and borough with the Commonwealth, fix the State tax due and unpaid, and transmit notice of the amount by mail, to officers making said returns; and that, if the amount so found due shall not be paid within sixty days, the Attorney General shall sue and collect the same, with interest from the date of such settlement; and hereafter it shall be the duty of the treasurer of every county, city, borough, school district, and incorporated district in this Commonwealth to deduct the said State tax on payment of any interest or dividend on debts due by the county, city, borough, school district, or incorporated district, and pay the same over to the State Treasurer within thirty days after the said interest or dividend has fallen due.

Sec. 4, Act of April 30, 1864, P. L. 218, as amended by Act of May 11, 1911, P. L. 236.

1667. It shall be the duty of the treasurer of each county, incorporated city, district and borough of this Commonwealth on the payment of any dividend or interest, to any holder or agent claiming the same, on any scrip, bond or certificate of indebtedness issued by said incorporated city, district and borough aforesaid, to assess the tax herein made and provided for state purposes, upon the nominal value of each and every said evidence of debt; said tax to be deducted by the said treasurer, on the payment of any interest or dividend aforesaid, and the same shall be held by him, until paid over to the state treasurer; and the said treasurers shall be subject to the same

penalties and liabilities now prescribed by existing laws in relation to taxes on bank dividends.

Part of Sec. 42, Act of April 29, 1844, P. L. 486.

(h) Constitutional Prohibition on Assumption of Township Debt by Commonwealth.

1668. The Commonwealth shall not assume the debt, or any part thereof, of any city, county, borough or township, unless such debt shall have been enacted to enable the State to repel invasion, suppressed domestic insurrection, defend itself in time of war, or to assist the State in the discharge of any portion of its present indebtedness.

Constitution of Pennsylvania, Sec. 9, Art. IX.

(i) Transfer of Municipal Securities.

1669. That bonds which have been or which may be issued by the state of Pennsylvania, or by any county, city, municipal authority or corporation therein, payable to bearer, may, at the option and at the expense of the holder thereof, be returned, and new registered bonds of the same or of a larger denomination, to the aggregate amount thereof, be issued, payable at the same time and place as the bonds so retired to the order of the holder of said registered bonds, and be transferable only in the presence of the register, transfer agent, clerk, or other person duly authorized by such state, county, city, municipal authority or corporation to keep the transfer book and make such exchanges and transfers which book of transfers the parties or corporations issuing such bonds are hereby required to keep; and for the interest due or to become due on the bonds so retired as aforesaid, it shall be lawful for the obligors to issue interest certificates, at the same rate of interest, due at the same time and place as the original coupons corresponding with the denominations of the registered bonds and payable to the order of the holder of said registered bond: Provided, That nothing heretofore properly and lawfully done under or in pursuance of the said first section, shall be impaired or invalidated by reason of this amendment.

Sec. 1, Act of May 1, 1873, P. L. 87, as amended by Act of May 2, 1879, P. L. 47.

1670. And it shall further be lawful for any corporate body, as aforesaid, which shall issue or may have issued coupon bond or bonds payable to bearer, to register any such original bond or bonds in the name of the holder thereof, and upon his or her request, and at his

or her expense, and stamp or print in large type, or write upon the face thereof, that the same will only be paid to the order of the registered holder thereof; and from and after such stamping, printing or writing, such bonds shall only be transferable in the manner provided for in the first section of this act, unless the holder shall make them payable to bearer by a properly attested assignment to that effect; such bond shall continue subject to successive registrations, limitations or transfers to bearer, at the option of each holder; and the word registered stamped, printed or written upon the coupon of such bonds, shall be legal notice that they are no longer payable to bearer, but to the order of the party in whose name the bond to which the coupon is attached, shall be registered, unless the last assignment thereon duly executed, shall be to the bearer, in which event the coupon shall be payable as other cases of coupon bonds to bearer.

Sec. 2, Act of May 1, 1873, P. L. 87.

1671. It shall be lawful for the holder or holders of any such coupon bonds or bond, payable to bearer, to stamp, print or write on the face thereof, "payable to endorsed holder," and to endorse thereon, pay to the order of. signing his, her or their names there-to in the presence of some officer authorized to take the acknowledgment of deeds, who shall attest the same under his hand and seal, and said bond, thereafter, shall only be payable to the legal holder thereof, or the legal representative of such holder; such bond or bonds shall continue subject to successive transfers in the same manner, and with like force and effect by the person thus legally holding the same; and the holder of such bond may stamp, print or write on the coupons thereof, "endorsed," and such stamping, printing or writing on the face and coupons of such bonds, shall be notice that they are no longer payable to bearer, but to the endorsed holder, or order, or the legal representatives thereof, unless the last endorsement shall be to bearer when they shall be payable as other coupon bonds to bearer.

Sec. 3, Act of May 1, 1873, P. L. 87.

1672. Registrations made, or to be made, of such bonds, in the manner herein provided, or in such other manner as may have been adopted between the makers and holders thereof, shall be valid; and the provisions of this act shall not be construed as repealing special enactments in regard to the transfer of bonds of any corporation, nor shall the transfer of any bond or bonds in the manner herein provided impair any security or the lien of any mortgage, which may have been given to secure the payment thereof, or the rights, duties and powers of any trustee in relation thereto.

Sec. 4, Act of May 1, 1873, P. L. 87.

1673. All certificates of stocks and loans which have been or may hereafter be issued by this Commonwealth, or by any municipal or other corporation, shall be transferable by the legal owner thereof, without any liability on the part of the transfer agents of the Commonwealth, or the municipal or other corporation permitting such transfers, to recognize or see to the execution of any trust, whether expressed, implied or constructive, to which such stocks or loans may be subject, unless when such transfer agents of the Commonwealth, or officers of such municipal or other corporation, charged with the duty of permitting such transfer to be made, shall have previously received actual notice in writing, signed by or on behalf of the person or persons from whom such stocks or loans appear by the certificate thereof to be held in trust, that the proposed transfer would be a violation of such trust.

Sec. 1, Act of May 23, 1874, P. L. 222.

Under this act it is the duty of the transfer agents of the corporation to make transfer of stocks or loans upon proper request of the owners thereof, without affirmative proof by the latter that such transfer is not in violation of a trust to which the stock or loan belonged: *Miller v. Westmoreland Coal Co.*, 40 Pa. C. C. 399, s. c. 22 D. R. 904.

A resident trustee for foreign executors who is the holder of a city loan, which stands in his name as such trustee, is entitled to transfer the same, with the concurrence of the cestuisque trustent: *Phelps et al. v. Philadelphia et al.* 12 Phila. 300.

(j) Townships to Receive Part of the State Tax on Premiums of Foreign Fire Insurance Companies.

1674. On and after the first day of January, one thousand nine hundred and nineteen, and annually thereafter, there shall be paid by the State Treasurer to the treasurers of the several cities, townships, and boroughs within the Commonwealth, the entire net amount received from the two per centum tax paid upon premiums by foreign fire insurance companies. The amount to be paid to each of the treasurers of the several cities, townships, and boroughs shall be based upon the return of said two per centum tax upon premiums received from foreign fire insurance companies doing business within the said cities, townships, and boroughs, as shown by the Insurance Commissioner's report. Warrants for the above purposes shall be drawn by the Auditor General, payable to the treasurers of the several cities, townships and boroughs, in accordance with this act, whenever there are sufficient funds in the State Treasury to pay the same.

Sec. 2, Act of June 28, 1895, P. L. 408, as amended by Sec. 1, Act of July 15, 1919, P. L. 964.

The purpose is not expressed in the act, but it is understood to be to provide a fund for the relief of disabled firemen. The selection of those

persons who shall participate in its distribution is exclusively within the legislative discretion of council. *Com. v. Smith, 10 North, 340, s. c. 2 Leb. 143.*

An ordinance of a city appropriating money received from the state under this act to a fireman's relief association does not violate article 9, section 7 of the state constitution. *Com. v. Barker, 211 Pa. 610.*

CHAPTER XXXII.

COLLECTION OF MUNICIPAL CLAIMS.

1675. Hereafter the exclusive methods for the collection of benefits assessed against any property in any proceedings by the appointment of viewers for the assessment of benefits incident to any public improvement in any city, borough, or township, shall be either by an action of assumpsit, against the owner of the property, or by the filing and collection of a municipal lien in the manner now provided by law.

In all cases where benefits in any such proceedings have been or shall be assessed against any property, it shall be the duty of the municipal authorities, within six months after the absolute confirmation of the report of viewers, to forthwith file the necessary municipal lien or liens to protect the interests of the city, borough, or township, and recovery may be had thereon in the manner now provided for the recovery of municipal liens.

This act shall apply to all proceedings now pending in any city, borough, or township, as well as to all proceedings hereafter instituted.

Sec. 1, Act of April 26, 1921, P. L. 315.

1676. Hereafter all municipalities of the Commonwealth of Pennsylvania may proceed for the recovery of any municipal claim or claims, whatsoever, by lien or by action of assumpsit; and authority is hereby conferred upon justices of the peace to entertain such actions of assumpsit, to the limits of their jurisdiction.

Sec. 1, Act of April 4, 1907, P. L. 40, as amended by Sec. 1, Act of March 25, 1909, P. L. 78.

The municipal claim for which there may be a recovery under this section by action of assumpsit means not only a claim which might be ascertainable from the confirmed report of the viewers, but also must be a claim filed within the period fixed by the Act of June 4, 1901, P. L. 364, as amended by Act of June 20, 1911, P. L. 1076. Unless so filed such claim is wholly lost. Effect of misnomer. *Youngwood Borough v. Gay, 7 West. 1, affirmed in 71 Super. Ct. 154.*

This act is constitutional. The mere filing of a municipal claim for an assessment for a street improvement will not bar the municipality from proceeding by an action of assumpsit for the collection of the claim: *Phila. to usc, v. DeArmond, 63 Super. Ct. 436.*

For distinction between the lien of a municipal claim upon property assessed and the procedure for its recovery, see *McKeesport Borough v. Fidler*, 147 Pa. 532.

In an action of assumpsit under the Act of April 4, 1907, P. L. 40, for municipal improvements assessed under the Act of May 16, 1891, P. L. 75, and its supplements an affidavit of defense is sufficient which sets forth that no assessment had been made against the defendant, as the owner of any property, and that no notice had been served upon him: *Borough of Youngwood v. Gay*, 71 Super. Ct. 154, affirming 7 West. 1.

In an action of assumpsit under this act, it was imperatively necessary for a use plaintiff, bringing suit in the name of the municipality, under the practice Act of May 25, 1887, P. L. 271, to annex to the statement of claim a copy of the contract between the municipality and the use plaintiff: *Philadelphia to use v. DeHaven*, 38 Super. Ct. 541.

This act has no retroactive effect and does not apply to the cases in which a road improvement had been completed and benefits assessed prior to its enactment. It imposes upon the owner of property a personal liability to which he was not subject before, and therefore affects rights and not merely the remedy: *Allentown v. Roth*, 231 Pa. 140, affirming 4 Lech. 136; *Barnesboro v. Speice*, 40 Super. Ct. 609; *Philadelphia v. DeHaven*, 41 Super. Ct. 265; *Crafton Borough v. Richards*, 17 D. R. 835; 55 P. L. J. 279. In *Miller's Estate*, 18 D. R. 225, this act was held retroactive.

1677. In addition to remedies provided by law, that all cities, boroughs, first class townships, incorporated towns, and any other municipalities may proceed for the recovery and collection of any municipal claim or claims whatsoever by action of assumpsit against the owner or owners of the property affected by any municipal improvement. Provided, That the provisions of this act shall extend to all municipal claims wherein the claim has been entered against the property as a lien: And provided further, That this act shall extend to all municipal improvements heretofore made where the right of action in assumpsit has been instituted under the provisions of prior acts of Assembly and where the claim is not barred by the statute of limitations affecting actions of debt or assumpsit: Provided, That such action in assumpsit shall be commenced within three years after the completion of the work for which said claim arises.

Sec. 1. Act of July 8, 1919, P. L. 786.

A municipal claim for the cost of grading, paving and curbing, which was not filed in the court of common pleas, cannot be recovered in an action of assumpsit. This act is retroactive in effect, and its title is sufficient: *Scott Township v. Davis*, 68 P. L. J. 217, affirmed in 77 Super. Ct. 352.

1678. The word "taxes" as used in this act means any county, city, borough, township, school, bridge, road or poor taxes.

The word "highway" as used in this act, means the whole or part of any public street, public road, public lane, public alley, or other public highway.

The words "tax claim," as used in this act, mean the claim filed to recover taxes.

Part of Sec. 1, Act of June 4, 1901, P. L. 364.

This entire act is **repealed** so far as it relates to tax liens and tax claims by the Act of May 24, 1921, P. L. 1089.

1679. The words "municipal claim," as used in this act, mean the claim filed to recover for the grading, guttering, macadamizing, or otherwise improving, the cartways of any public highway; for grading, curbing, recurbing, paving, repaving, constructing, or repairing the footways thereof; for laying waterpipes; gas-pipes, culverts, sewers, branch sewers, or sewer connections therein; for assessments for benefits in the opening, widening or vacation thereof; or in the changing of water-courses or the construction of sewers through private lands; or in highways of townships of the first class; or in acquisition of sewers and drains constructed and owned by individuals or corporations, and of rights in and to use the same; for the removal of nuisances; or for water rates, lighting rates, or sewer rates.

Part of Sec. 1, Act of June 4, 1901, P. L. 364, as amended by Sec. 1, Act of May 28, 1915, P. L. 599. See also section 1684.

The words "otherwise improving" includes paving: *Philadelphia to use v. Pemberton*, 208 Pa. 214; *Philadelphia to use v. Pemberton*, 25 Super. Ct. 323, reversing 29 Pa. C. C. 252, s. e. 12 D. R. 743.

1680. The word "claimant" as used in this act, means the plaintiff or use plaintiff, in whose favor the claim is filed as a lien.

The word "contractor" as used in this act, means the person or persons, who, under contract with the legal plaintiff, performed the work for which the lien is given.

Part of Sec. 1, Act of June 4, 1901, P. L. 364, as amended by sec. 1, Act of May 28, 1915, P. L. 599.

A municipal lien filed to use will not be stricken off because it is signed by attorney designating himself as solicitor for claimant as word claimant means plaintiff or use-plaintiff: *Prospect Park Boro. v. Duhring*, 14 Del. 315.

1681. The word "owner," as used in this act, means the person or persons in whose name the property is registered, if registered according to law; and in all other cases means any person or persons in open, peaceable, and notorious possession of the property as apparent owner or owners thereof, if any, or the reputed owner or owners thereof, in the neighborhood of such property.

Part of Sec. 1, Act of June 4, 1901, P. L. 364, as amended by Sec. 1, Act of May 28, 1915, P. L. 599.

See section 1690 and 1692.

One who holds the legal title but enters into an executory agreement to sell is the "owner" of the property sufficient to support an assessment for a

municipal claim: *Youngwood Borough v. Gay*, 7 West. 1.

A life tenant is an "owner" and his estate is properly chargeable for the construction of a side-walk in front of the property: *York City v. Beitzel*, 41 Super. Ct. 194, reversing 21 York 100, 2 Lehigh. 315.

1682. The word "property" as used in this act, means the real estate subject to the lien, and against which the claim is filed as a lien.

Part of Sec. 1, Act of June 4, 1901, P. L. 364.

The roadbed of a public road is not "real estate" within the meaning of this section: *Philadelphia v. Phila. and Reading R. R. Co.*, 38 Super. Ct. 529-531; *Philadelphia to use v. Fairhill R. R. Co.*, Nos. 1 and 2, 41 Super. Ct. 245-246.

1683. All municipal claims which may hereafter be lawfully imposed or assessed on any property in this Commonwealth, in the manner and to the extent hereinafter set forth, shall be and they are hereby declared to be a lien on said property, together with all charges, expenses and fees added thereto for failure to pay promptly, and said liens shall have priority to and be fully paid and satisfied out of the proceeds of any judicial sale of said property, before any other obligation, judgment, claim, lien or estate with which the said property may become charged, or for which it may become liable save and except only the costs of the sale and of the writ upon which it is made, and the taxes imposed or assessed upon said property.

Sec. 3, Act of June 4, 1901, P. L. 364.

Municipal liens, entered since June 4, 1901, have no priority over mortgages created prior to the passage of the Act of June 4, 1901, P. L. 364: *Martin v. Greenwood*, 27 Super. Ct. 245.

A municipal lien for lighting rates, water rents, taxes, and the like, attaches at the time when the rates are lawfully assessed or imposed, and if the formal declaration of the claim in detail is filed within the statutory period, the lien will be preserved and relate back to the time when the rate or tax was lawfully imposed. The provision authorizing a lien for the municipal lighting rates is constitutional and does not offend against Sec. 7, Art. III, which prohibits the enactment of any local or special law authorizing the creation of liens: *Franklin Guards Association v. Boyer*, 70 Super. Ct. 263.

In a sheriff's sale on a first mortgage a municipal lien filed after the Act of June 4, 1901, P. L. 364, is not preferred to a mortgage, judgment or municipal lien accrued and filed previous to that act: *Oil City Building and Loan Association v. Shanfelter*, 29 Super. Ct. 251; *Gibbons v. Cochran*, 32 Super. Ct. 185. *Tax liens Contra. See Haspel v. O'Brien*, 218 Pa. 146, reversing 32 Super. Ct. 147, and *Gibbons v. Cochran*, 32 Super. Ct. 185.

1684. The lien for taxes shall exist in favor of and the claim therefor may be filed against the property taxed by, any county, city, borough, township, school district, road district, or poor district to which the tax is payable. The lien for the removal of nuisances shall exist in favor of, and the claim therefor may be filed against the property from which it is removed or by which it is caused, by

any city, borough, or township, by or for which the nuisance is removed. The lien for grading, guttering, paving, macadamizing, or otherwise improving the cartways of any highways; for grading, curbing, recurbing, paving, repaving, constructing, or repairing the footways thereof; or for laying water pipes, gas pipes, culverts, sewers, branch sewers, or sewer connections in any highway; for assessments for benefits in the opening, widening or vacation thereof; or in the changing of water courses or construction of sewers through private lands; or in highways or townships of the first class; or in the acquisition of sewers and drains constructed and owned by individuals or corporations, and of rights in and to use the same; or for water rates, lighting rates, or sewer rates, or rates for any other service furnished by a municipality,—shall exist in favor of, and the claims therefor may be filed against the property thereby benefited by, the city, borough, or township extending the benefit. Where the contractor performing the work is to be paid by assessment bills, the lien shall exist for, and the claim shall be filed to, his use, and he shall under no circumstances have recourse to the city, borough, or township authorizing the work.

Sec. 4, Act of June 4, 1901. P. L. 364, as amended by Sec. 2, Act of May 28, 1915, P. L. 599.

A municipality can impose a valid municipal lien for street improvements only when the improvements are made in pursuance of law and the mode pointed out by the city ordinance is strictly followed: *Scranton Sewer*, 213 Pa. 4.

The Act of June 4, 1901, 364, as amended, does not take away from a municipality any remedy which it before that time had for collection of taxes or claims in a manner other than by filing a lien. The owner or occupier of real estate could be proceeded against personally where he was under previous legislation personally liable. And a municipality can enforce a regulation stopping the supply of water unless all arrearages are paid, whether owing by the tenant in possession who acquired his title at a sheriff's sale or by his predecessors: *Kohler v. Reitz*, 46 Super. Ct. 350.

The road bed or right of way of a street railway company, covered with tracks, is not subject to a lien since a pavement confers no benefit on the property known as the right of way, but ground not occupied or used for its road bed is subject to a municipal lien for street improvements: *Borough of Dormont v. Mount Washington Street Railways Company*, No. 1, 63 P. L. J. 556.

A municipality may file a lien for abating a nuisance on an unadopted street, and where other items are improperly included, each for a specific amount, for which the municipality had no right to file a lien, the court may strike off the improper items without affecting the validity of the lien for the cost of abating the nuisance: *Philadelphia v. Hyde*, 48 Super. Ct. 269.

A municipal lien may be filed for paving a cartway. Such lien is not invalid because the paving contract required the contractor to keep the

pavement in repair for five years where it appears that the pavement laid in accordance with the specifications will last five years without repairs and the contract price did not include any charges for repairs or maintenance or guarantee: *Philadelphia to use v. Pemberton*, 208 Pa. 214; *Philadelphia to use v. Pemberton*, 25 Super. Ct. 323, reversing 29 Pa. C. C. 252, s. c. 12 D. R. 743.

In a lien filed to use, the use plaintiff is entitled to recover all that the municipality could have recovered including the penalty: *Borough of Lansdowne v. Phipps*, 12 Del. Co. 235.

Where improvement bonds were issued to a contractor and accepted by him for paving a street, and the bonds provide that they shall rest upon and be payable out of assessments and from no other fund and a lien is filed by the municipality, it was not necessary to file the claim to the use of the contractor as the contractor was paid by the bonds and not by the assessment bills: *York City v. Eyster*, 68 Super. Ct. 104, affirming 29 York 193; *York City v. Holtzapple*, 67 Super. Ct. 596, affirming 7 Lch. 193, 30 York 173.

When a municipality adopted one system of payment in paving certain streets it was not prohibited from adopting another system for different streets. A municipality may properly discriminate between different localities and different streets without abuse of discretion: *York City v. Eyster*, 68 Super. Ct. 104, Affirming 29 York 193, 30 York 29.

Where the charter of a cemetery company exempts the land of the company and the burial lots therein "from execution, attachment, taxation or any other claim, lien or process," a municipal lien for a sewer improvement cannot be filed against the land of the company or the burial lots. This section does not repeal those charter immunities: *Union Dale Cemetery Company's Case*, 227 Pa. 1.

A playground connected with a parochial school which dispenses education to the public freely and without discrimination, is an institution of purely public charity and is not subject to tax or municipal claims: *Chester City v. Prendergast*, 34 York. 5, s. c. 14 Del. 226.

An unused portion of a church lot is not exempt from a municipal claim for paving: *Parnassus Borough v. Parnassus United Presbyterian Church*, 43 Pa. C. C. 142, s. c. 4 West 155.

A cemetery is not within the provisions of this section when the cemetery is owned by an incorporated church congregation, which sells lots to its members and non-members and places the proceeds in its own treasury and uses them for church purposes; and this is the case although it appears that the church was still indebted for a considerable portion of the purchase money of the land and for the cost of improving it for burial purposes and there was evidence of an intention to purchase the land not as an investment, but only and solely as a place of burial: *Mount Oliver Borough v. First German Evangelical Lutheran St. Paul's Congregation of East Birmingham*, 51 Super. Ct. 343.

A cemetery that had not fenced in or dedicated to burial purposes a portion of its land abutting on a street which was being paved, and had sold lots only to members of the church with which it was connected, its funds being mingled with those of the church and expended for general church purposes, is not within the exemption provided in this section: *Eighteenth Street*, 42 Pa. C. C. 253, s. c. 62 P. L. J. 265, 6 M. L. R. 50.

A church corporation having signed a petition to councils for a street improvement, thereby indicating its intention to pay its proportionate share of

the cost thereof will be estopped from setting up exception from assessment under this section: *Ligonier Borough v. Presbyterian Church*, 22 D. R. 868, s. c. 2 West, 233, 4 M. L. R. 220; *Broad Street, Sewickley M. E. Church's Appeal*, 165 Pa. 475.

1685. All real estate, by whomsoever owned and for whatsoever purpose used, shall be subject to all taxes and municipal claims herein provided for; except that all property owned by the State, county, city or other municipal divisions, and actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity, shall not be subject to tax or municipal claims except for removal of nuisances, for sewer claims and sewer connections, or for the recurring, paving, repaving, or repairing the footways in front thereof. All other real estate, by whomsoever owned and for whatsoever purpose used, shall be subject to all tax claims and municipal claims herein provided for: Provided, however, That nothing in this act contained shall hinder or prevent any city, borough, or township of the first class from providing that any municipal work may be done at the expense of the public generally, and be paid out of the general city, borough or township funds.

Sec. 5, Act of June 4, 1901, P. L. 364, as amended by Sec. 3, Act of May 28, 1915, P. L. 599.

This section does not violate Art. 3, Sec. 3, of the Constitution as containing subject matter not sufficiently expressed in the title of the act: *Garrick v. Canavin*, 243 Pa. 283; nor does it violate Art. 3, Sec. 7 or Art. 9, Secs. 1 and 2 of the Constitution: *Pittsburgh v. Calvary Cemetery Association*, 44 Super. Ct. 289.

To collect the cost of public improvement from abutting property owners it is a basic and fundamental prerequisite that the municipality should signify its intention to make such assessment; ordinances for the assessment of the cost of lateral sewers in a given district, and for the main and trunk sewers leading to the main outfall sewer, which have no reference to the latter improvement, are not authority for assessments on properties abutting on the outfall sewer. The basic and fundamental legislation necessary for such assessment being lacking, it cannot be sustained: *Carlisle v. Welsh et al.*, 74 Super. Ct. 255.

The road bed of a public railroad is not "real estate" within the meaning of this section and is not subject to assessment for local taxation or municipal claims: *Philadelphia v. Phila. and Reading R. R. Co.*, 38 Super. Ct. 529-531; *Philadelphia to use, v. Fairhill R. R. Co.*, Nos. 1 and 2, 41 Super. Ct. 245-246.

1686. No claim shall be filed for curbing, recurring, paving, repaving or repairing the foot way of any highway, unless the owner shall have neglected to do said work for such length of time as may be prescribed by ordinance, after notice so to do, served upon him or his agent or the person in possession of the property, except when in the case of curbing, or recurring or repaving the footway, it shall

form part of an improvement resulting also in the paving, macadamizing or otherwise improving the cartway of said highway; and if there be no agent or party in possession it may be posted on the most public part of the property.

Sec. 8, Act of June 4, 1901, P. L. 364.

See section 1690 and 1714, with notes.

Notice to owner is not required before paving street: *Allentown to use of Barber Asphalt Paving Co. v. Light*, 15 D. R. 619.

A borough has a right to place the curb when the cartway of a street is paved, and at the same time charge the owner for cost of the curb although at the time there is no sidewalk or paved footway. It is not necessary that the space allotted for a sidewalk be covered by paving. It is a side walk even if not paved: *Punxsutawney v. Cormalt*, 44 Super. Ct. 365.

A notice to curb and pave a borough sidewalk, served before the sidewalk is brought from the natural to the established grade, is not sufficient to sustain a lien for curbing and paving after the borough does the grading. To charge the property owner it is necessary to serve a notice after the borough brings the sidewalk to grade: *Lansdowne Borough v. Burdsall*, 26 D. R. 938, s. c. 31 York, 84, 14 Del. 325; *Chester City v. Lanc*, Nos. 1, 2, 3, 4, 24 Super. Ct. 359-367-368-369; *Shady Avenue*, 34 Super. Ct. 327.

A city cannot recover from a property owner the cost of laying a sidewalk in front of his premises, where it appears that the notice to the owner to lay the sidewalk was posted on the premises, which were at the time in possession of tenants. Such a notice is sufficient only when there is no party in possession: *City of Scranton v. Carter Estate*, 21 Lack. J. 68.

A notice from a borough to build a sidewalk in front of a vacant lot, served off the premises upon the wife of the occupant who lived on an adjoining property, but was not the owner's agent, will not support a municipal claim against the lot for a walk subsequently built by the borough, when the owner, a non-resident, had no knowledge of the borough's action in the matter, and there was no written or printed notice thereof posted on the premises: *Laporte Borough v. Walsh*, 28 D. R. 650.

In a scire facias sur municipal lien to recover the cost of curbing and guttering for a sidewalk the defence that the borough has not brought the sidewalk to grade will not avail the defendant, unless it is shown that a material grading or filling and such as would make a difference in the expense to complete the work, was required: *Morton Borough v. Smith*, 23 D. R. 1071, s. c. 12 Del. 523, 5 M. L. R. 282.

1687. Where claims are to be filed to use, the claimant, at least one month before the claim is filed, shall serve a written notice of his intention to file it unless the amount due is paid. Service of such notice may be made personally on the owner wherever found; but if he cannot be served in the county where the property is situated, such notice may be served on his agent or the party in possession of the property; and if there be no agent or party in possession of the property, it may be posted on the most public part of the property.

Sec. 9, Act of June 4, 1901, P. L. 364.

Notice of intention to file lien by use claimant for construction of borough sewer may be given before assessment of cost is made: *Prospect Park Boro. v. Duhring*, 14 Del. 315.

It is not necessary under clause 7, Sec. 1600, in filing a municipal claim to set forth in the lien the notice provided for in this section: *Allentown to use of Barber Asphalt Paving Co. v. Light*, 15 D. R. 619; *City of York v. Miller*, 254 Pa. 436.

Unless the notice required by this section is given owner, where a claim is filed to use no recovery can be had: *City of York v. Miller*, 254 Pa. 436, affirming 60 Super. Ct. 407, reversing 28 York 17.

The giving of notice by the use plaintiff to the owner of the property although not required to be set forth in the lien, is an essential prerequisite to the filing of the lien. Defendant is permitted to shew that he had not been served with notice by the use plaintiff even though such lack of notice is not raised in the affidavit of defense. As to matters not alleged in the lien the defendant is not limited to the defense set forth in his affidavit: *City of York v. Miller*, 254 Pa. 436, affirming 60 Super. Ct. 407, reversing 28 York 17.

Where, under the terms of a contract and ordinance, the contractor was not a party to the lien, he could not be expected to give any notice of the intention to file the same: *City of York v. Eyster*, No. 2, 30 York 29, affirmed in 68 Super. Ct. 104.

Notice by a contractor of intention to file a lien is good, even though filed less than ten days after approval of ordinance assessing the cost where it is more than one month before the claim was filed: *Prospect Park Borough v. Wyndham*, 8 M. L. R. 55, s. c. 14 Del. 117.

1688. Claims for taxes, water rents, lighting-rates, and sewer rates must be filed in the court of common pleas of the county in which the property is situated, on or before the last day of the third calendar year after that in which the taxes or rates are first payable; and other municipal claims must be filed in said court within six months from the time the work was done in front of the particular property, where the charge against the property is assessed or made at the time the work is authorized; within six months after the completion of the improvement, where the assessment is made by the municipality upon all the properties after the completion of the improvement; and within six months, after confirmation by the court, where confirmation is required; the certificate of the surveyor, engineer, or other officer supervising the improvement, filed in the proper office, being conclusive of the time of completion thereof, but he being personally liable to any one injured by any false statement therein. A number of years taxes or rates of different kinds, if payable to the same plaintiff, may be included in one claim.

Municipal claims shall likewise be filed within said period, where an appeal is taken from the assessment for the recovery of which such municipal claim is filed. In such case the lien filed shall be in the form hereinafter provided, except that it shall set forth the amount of the claim as an undetermined amount, the amount thereof to be determined by the appeal taken from the assessment upon which such municipal claim is based, pending in a certain court (referring to the court and the proceeding where such appeal is pending). Upon

the filing of such municipal claim, the claim shall be indexed by the prothonotary upon the judgment index and upon the locality index of the court, and the amount of the claim set forth therein as an undetermined amount.

If final judgment is not obtained upon such appeal within five years from the filing of such municipal claim, the claimant in the lien shall, within such period of five years file a suggestion of non-payment in the form hereinafter set forth, which shall have the effect of continuing the lien thereof for a further period of five years from the date of filing such suggestion. Such municipal claim shall be revived in a similar manner, during each recurring period of five years thereafter, until final judgment is entered upon said appeal and the undetermined amount of such municipal claim is fixed in the manner hereinafter provided.

When the final judgment is obtained upon such appeal, the court in which said municipal claim is pending shall, upon the petition of any interested party, make an order fixing the undetermined amount claimed in such claim at the amount determined by the final judgment upon said appeal, which shall bear interest from the date of the verdict upon which final judgment was entered, and thereafter the amount of said claim shall be the sum thus fixed. Proceedings upon said municipal claim thereafter shall be as in other cases.

Where, on final judgment upon said appeal, it appears that no amount is due upon the assessment for the recovery of which such claim is filed, the court in which such municipal claim is pending shall, upon the petition of any interested party, make an order striking such municipal claim from the record, and charge the costs upon such claim to the plaintiff in the claim filed.

Where such appeal is discontinued the court in which such municipal claim is pending shall, upon the petition of any interested party, make an order fixing the undetermined amount claimed at the amount of the original assessment, which shall bear interest from the date that such assessment was originally payable, and thereafter the amount of such claim shall be the sum thus fixed.

Such tax, municipal, or other claim, if filed within the period aforesaid, shall remain a lien upon said properties until fully paid and satisfied: Provided, however, that either a suggestion of non-payment and an averment of default in the form hereinafter provided, be filed in cases of tax claims either before or after judgment on the scire facias, and in cases of other than tax claims after judgment on the scire facias, or else a writ of scire facias, in the form herein provided, be issued to revive the same within each period of five years following—(a) the date on which said claim was filed, (b) the date on which a writ of scire facias was issued thereon, (c) the date on

which any judgment was entered thereon, (d) the date on which a previous suggestion of non-payment and default was filed thereon, or (e) the date on which a judgment of revival was obtained thereon.

The suggestion and averment shall be in the following form under the caption of the claim:—

And now.....the claimant, by..... his solicitor, suggests of record that the above claim is still due and owing to the claimant, and avers that the owner is still in default for non-payment thereof. The prothonotary is hereby directed to enter this suggestion and averment on the municipal lien or the proper docket of the claim, and also to index it upon the judgment index and on the locality index of the court, for the purpose of continuing the lien of the claim.

Such suggestion and averment must be signed by the solicitor or chief executive officer of the claimant. The prothonotary shall docket and index the suggestion and averment as directed therein; and for such services shall be entitled to a fee of one dollar, to be taxed and collected as other costs in the claim. The filing and indexing of such suggestion and averment within five years of filing the claim or the issuing of any writ of scire facias thereon, or of any judgment thereon, or on the filing of any prior suggestion and averment of default, shall have the same force and effect, for the purposes of continuing and preserving the lien of the claim, as though a writ of scire facias had been issued or a judgment or judgment of revival and been obtained within such period: Provided, That no writ of levari facias shall be issued upon a claim, for the purpose of exposing the property liened to sheriff's sale, except after a judgment shall have been duly obtained upon the claim, as provided in this section, and such judgment must have been obtained within five years of the issuance of the levari facias. Whenever the lien of a claim has been revived and continued by the filing and indexing of a suggestion and averment of default, the claimant may, at any time within five years therefrom, issue a writ of scire facias thereon reciting all suggestions and averment of default filed since the filing of the claim, and shall proceed thereon, in the manner herein provided, subject to the right of the owner to raise any defense arising since the last judgment.

If a claim be not filed within the time aforesaid, or if it be not prosecuted in the manner and at the time aforesaid, it shall be wholly lost.

Sec. 10, Act of June 4, 1901, P. L. 364, as amended by Sec. 1, Act of June 20, 1911, P. L. 1076.

The law contemplates three different kinds of claim: First where the act of the municipality has reference to work in front of the particular property, and charges and assesses the cost, when the work is authorized, but the claim is not complete, nor does the lien attach until the work is done.

In such case the law requires the lien to aver the date when the work was completed, and the lien must be filed within six months from that time. Second, where the act of the municipality has reference to the general improvement of the street, and the proper proportionate part of the cost is not assessed against each particular property until the entire work is completed. In such case the law requires the lien to aver the date of completion of the entire improvement, and the lien must be filed six months from that time. Third, where a confirmation by the court is necessary, the law requires the lien to aver the date of confirmation by the court, and the lien must be filed within six months from that time.

Clause 5, Sec. 1690, relates to the same three classes of cases: *Lansdowne Borough, to use, v. Hartel*, 48 Super. Ct. 430, affirming 11 Del. 356, 458.

A borough cannot join in one municipal lien assessments for different improvements assessed by different officials. A municipal claim which is silent as to the date of the completion of the work is fatally defective: *Avalon Borough v. Arderly*, 29 D. R. 178, s. c. 67, P. L. J. 307.

Under Sec. 3, Act of April 23, 1889, P. L. 44, where the paving of two squares was done in two installments, a lien filed more than two years after the completion of the work on the first square, but within six months after the completion of the work on the second square, is valid: *Tarentum Borough v. Moorhead*, 26 Super. Ct. 273.

Where a number of blocks on a street were paved the ordinance providing "the intent being that the completion of the pavement on each square shall be the completion of the improvement as authorized by ordinance," the contractor has a right to file a lien for the paving of the first block as soon as the block is finished: *Philadelphia to use, v. Street*, 41 Super. Ct. 503.

Where the lien avers that a curbstone and block were set in front of a particular property on specified dates, it is a sufficient averment that the work was done and completed on the dates specified, although the word "completion" is not used in the claim. If the claim is filed within six months from the dates specified it will be good: *Landsdowne Borough to use v. Hartel*, 48 Super. Ct. 430, affirming 11 Del. 356, 458.

The Act of June 4, 1901, P. L. 364, refers to municipal improvements wherein the municipality and the property owner alone are concerned. Section 10, as amended above, refers to the officers of the municipality which undertakes to make a municipal improvement when it speaks of "the certificate of the surveyor, engineer, or other officer supervising the improvement." A ledger entry of the State Highway Department is, therefore, not the equivalent of the certificate of a municipal officer and will not prevent the abutting owner from showing, in the absence of such certificate, that the lien was filed more than six months after the completion of the improvement: *Punxsutawney Borough v. Nordstrom*, 61 Super. Ct. 253; *Borough of Punxsutawney v. Perry Wingert*, 63 P. L. J. 155.

Since the certificate of the proper officer as to the time of the completion of an improvement is conclusive, this question cannot be successfully raised in an affidavit of defense, where the date of the completion stated in the certificate showed that the lien was filed within the six months: *Philadelphia to use v. Street*, 41 Super. Ct. 503.

Claims for taxes are wholly lost unless filed in the court of common pleas on or before the last day of the third calendar year after that in which they were first respectively payable: *Armstrong, for use v. Wolcott*, 26 D. R. 899, s. c. 65 P. L. J. 389; *First National Bank of Bridgeville v. Pittsburgh Silica Co.* 12 Just. L. R. 281; *Phila. to use, v. DeArmond*, 63 Super. Ct.

436: *Wainwright Jr. v. Mooney*, 64 P. L. J. 267; *Armstrong v. Wolcott*, 65 P. L. J. 389, s. c. 26 D. R. 899.

If a municipal claim be not filed within the period fixed by this section, the borough cannot recover such claim in any form of action. The filing of the claim is necessary to avoid a lapse of the claim: *Youngwood Borough v. Gay*, 7 West. 1, affirmed in 71 Super. Ct. 154; *Scott Township v. Davis*, 77 Super. Ct. 352.

A municipal lien filed more than six months after the actual completion of the improvement is invalid, and uncontradicted testimony as to the actual time of the completion of such improvement will prevail over a record from the State Highway Department indicating a later date: *Borough of Punxsutawney v. Perry Wingert*, 63 P. L. J. 155.

A municipal claim, filed before the passage of the Act of June 4, 1901, P. L. 364, loses its lien if a scire facias is not issued and prosecuted to judgment within five years from the date of the filing of the claim and all subsequent proceedings would be a nullity: *City of Phila. v. Elliott*, 23 D. R. 643. A scire facias to revive a municipal lien must not only be issued within one of the five year periods as fixed by this section but must also be served as required by law, within such five year period: *Scranton City v. Scranton Hosiery Mills*, 44 Pa. C. C. 87, s. c. 16 Lack. J. 275, see sections 1696-1697. Judgment of non pros. will be awarded where scire facias not properly proceeded in: *City of Scranton to use v. Richmond*, 16 Lack. J. 64.

An alias writ of scire facias is not a continuation of the original writ, where the latter was not properly issued and served, and in such case the alias becomes the original and unless issued and served in the manner and within the time prescribed by the act under which it is issued it is void and will not serve to continue the lien: *Scranton City v. Stokes*, No. 2, 28 Super. Ct. 437.

Judgment of non pros. will be awarded on a rule where scire facias is not prosecuted within the proper time: *City of Scranton to use v. Wm. H. Richmond*, 16 Lack., J. 64. See *Wainwright Jr., v. Mooney*, 64 P. L. J. 267.

The entry of a general appearance by a defendant nine years after a claim was filed cannot be construed as a waiver of the defense that the lien of the claim had expired four years before the appearance was entered or cure a lack of service of notice: *Phila. to use v. Mason*, 37 Super. Ct. 478.

In the case of *Scranton v. Genet*, 232 Pa. 272, (decided before the passage of the amendment of 1911) it was held that the first scire facias provided for in section 10 is the process to reduce the claim to judgment and that it is this judgment that must be revived by writ of scire facias "to revive the judgment." The right to revive pertains not to the lien but the judgment obtained thereon. In *Reading v. Moers*, 11 Berks, 229, s. c. 11 M. L. R. 95, Judge Endlich (on June 21, 1919) held "In the light of *Scranton v. Genet*, supra, it is readily seen that, at any rate so far as concerns other than tax claims, this enactment (referring to the amendment of 1911), very like the one of 1901, requires that the municipality take the steps pointed out by the statute to enforce or continue the claim; that within certain designated periods, the proceedings be pushed to a finality; and that failure to comply with these requisitions destroys the claim. In the present case, as already stated, a scire facias issued to No. 142, Apr. 7, 1913, was not prosecuted to a verdict or judgment within five years from the date

of its issuance. It follows that the claim is lost to the city and cannot be the basis of any further proceedings for collection."

A municipal claim can be stricken off only for defects appearing on the face of the record; matters of defense, such as the right of the city to lay a pavement and the liability of the owner can be raised only on scire facias: *Adamstown Borough v. Hartman*, 36 Lane. 73, s. c. 10 M. L. R. 174, 33 York 48, 67 P. L. J. 545.

In the rule to stike off a municipal claim based on a viewers report, questions, which a lot owner desires to raise, should in the first instance be raised before the viewers: *Township of Stowe, v. Sterrett*, 66 P. L. J. 709.

A municipal lien is not lost where a judgment is entered by the prothonotary pursuant to the direction of a referee within two days before the expiration of the five year period from the entry of the original judgment. The decision by the referee had the same weight as a verdict of a jury, and under the provisions of section 10 of the Act of June 4, 1901, P. L. 364, the lien continued five years from the date of such entry: *Dunmore Borough v. Conrad*, 76 Super. Ct. 473.

1689. Hereafter all municipal liens filed under any act of Assembly shall be revived, continued, and collected under and according to the procedure and provisions of the act, approved the fourth day of June, one thousand nine hundred one (Pamphlet Laws, three hundred and sixty-four), and the several amendments thereof and supplements thereto, entitled "An act providing when, how, upon what property, and to what extent, liens shall be allowed for taxes, and for municipal improvements and for the removal of nuisances; the procedure upon claims filed therefor; the methods for preserving such liens and enforcing payment of such claims; the effect of judicial sales of the properties liened, and the manner of distributing the proceeds of such sales."

Sec. 1, Act of April 4, 1919, P. L. 30.

1690. Said claim shall set forth:

1. The name of the county, city, borough, township, school district, road district, or poor district, by which filed.
2. The name of the owner of the property against which it is filed.
3. A description of the property against which it is filed.
4. The authority under, or by virtue of which, the tax was levied or the work was done.
5. The time for which the tax was levied or the date on which the work was completed, in front of the particular property against which the claim is filed; or the date of completion of the improvement, where the assessment is made after completion; or the date of confirmation by the court, where confirmation is required done.
6. If filed to the use of a contractor, the date of and the parties to the contract for doing said work; and,

7. In other than tax claims, the kind and character of the work done, for which the claim is filed, and if the work be such as to require previous notice to the owner to do it, when and how such notice was given.

Said claim must be signed by the solicitor or chief executive officer of the claimant; and in the case of a use plaintiff, must be accompanied by an affidavit that the facts therein set forth are true to the best of his knowledge, information and belief.

Sec. 11, Act of June 4, 1901, P. L. 364.

See sections 1680, 1681, 1686, 1687, 1696, 1699, 1714, with notes.

What a municipal claim shall contain is found in this section and the requirements in other sections do not relate to what is necessary to be contained in municipal liens, and if these requirements outside section 11 have not been observed they become matter of defense on a scire facias and are not available on a motion to strike off a lien: *McDonald Borough v. William*, 41 Pa. C. C. 157.

A municipal lien for paving a sidewalk which gives the date of the ordinance under which the work was done, describes the property against which the lien is claimed, and avers that the owner was duly notified in writing to do the work, complies with the requirements of this section: *Glenolden Borough to use v. Scott*, 15 D. R. 705, s. c. 9 Del. 514, 10 North C. R. 77, 19 York 75; *McDonald Borough v. Williams*, 41 Pa. C. C. 157.

Where a municipal lien filed by a borough against a decedent's estate for paving a street misnamed the county in which the borough was situated; and set forth the name of the owner at the time the lien was filed as "The Robert Miller Estate;" and filed it for a lump sum, setting forth "the kind and character of the work done" as "grading, paving and curbing of Market Street in front of the said lot or piece of ground" without stating whether it was roadway or footway, the number of feet, or price, or nature and character of the materials used; and stated that the work "was finally confirmed by the said burgess and town council," will be stricken off on motion as too vague and indefinite and not according to the requirements of this section: *Freeport Borough v. Robert Miller Estate*, 34 Super. Ct. 395.

On a scire facias sur municipal lien, the lien will be stricken from the record, where the lien did not state the name of the registered owner of the property at the time the lien was filed: *Borough of Bellerue v. Whitehead et al.*, 64 P. L. J. 237. See definition of owner, section 1678.

Where the description of the property is definite and is not rendered uncertain or doubtful by failure to embrace an area which might have been included, it is a sufficient compliance with clause 3. *Township of Stouce v. Sterrett*, 66 P. L. J. 709. Where, under clause 3, the description was insufficient: *In re Rule to strike off tax lien against Schappert*, 18 Luz. L. R. 76.

It is not necessary, under clause 4, to set forth the ordinance or laws which authorized the improvement. A reference to them is sufficient: *Allentown to use of Barber Asphalt Paving Co. v. Light*, 15 D. R. 619.

Under clause 4 of this section it is not necessary for the lien to set out at length the acts and ordinances under which the work was done. If the lien refers to such authority by recital of title it will be sufficient: *York*

City v. Holtzapple, 67 Super. Ct. 596, affirming 7 Lch. 193; 30 York 173, nor is it necessary for the lien to set out when and by whom the amount claimed was assessed, nor the copy of the contract between the borough and the use plaintiffs: *Lansdowne Boro. to use v. Hartel*, 48 Super. Ct. 430, affirming 11 Del. 356, 458.

A municipal lien need not state the Acts of Assembly nor the general ordinances but the authority by which the municipality acted in the particular case, and which are required to be set out, is "the action of the proper body and the character and extent of that action." Under clause 7 where curbing is laid the lien should also set forth that the owner neglected to do the work for the length of time prescribed by ordinance after notice. Where an act of Assembly directs the manner in which a lien shall be filed, the direction contained therein must be strictly followed: *City of Lancaster v. Haller*, 35 Lanc. L. R. 97.

The three different classes of lien, which are provided for in Section 1688 and in clause 5 of this section, are defined in the following case, which holds that an averment in a municipal claim that a curbstone and block were set in front of a particular property on specified dates, is a sufficient averment that the work was done and completed on the dates specified, although the word "completion" is not used in the claim: *Lansdowne Borough, to use, v. Hartel*, 48 Super. Ct. 430, affirming 11 Del. 356, 458.

Under clause 7 of this section a claim is properly signed by a borough by an attorney, designating himself as solicitor for claimant, as word claimant filled out for filing in court: *Old Forge Borough v. Foley Estate*, 67 Super. Ct. 125, reversing 17 Lack. J. 197.

A municipal lien filed to use will not be stricken off because it is signed by an attorney, designating himself as solicitor for claimant as word claimant means plaintiff or use plaintiff: (See section 1680). *Prospect Park Boro. v. Duhring*, 14 Del. 315. As to signing claim for use plaintiff see *Allentown to use v. Ackerman*, 37 Super. Ct. 363, affirming 2 Lch. 236.

A claim with a rubber stamp impression of the signature of the "solicitor for claimant" ratified later by his appearance in defense of the claim, is a sufficient signing; and a notarial certificate that he made affidavit thereto is a sufficient compliance with this section: *Philadelphia to use v. Kinkaid et al.*, 24 D. R. 287.

The only person authorized to make the affidavit is the solicitor or chief executive officer of the claimant, or, perhaps the use plaintiff himself, if he be a natural person. Where the affidavit accompanying the claim is not made by the person designated but is so drawn as to affect the landowner with notice of that fact, the defect will be deemed to have been waived if the owner raises no objection either by demurrer or motion to strike off the claim and first raises the objection on a motion for compulsory nonsuit: *Allentown to use, v. Ackerman*, 37 Super. Ct. 363, affirming 2 Lch. Co. L. J. 236.

The lien complies with clause 7 when it describes the character of the work as "cartway paving with stone block" and "new curb." It is not necessary to set out the kind of stone blocks used or the kind of curb set. A lien for paving which is on a printed form containing the printed signature of "John L. Kinsey, City Solicitor, per" followed by the written signature of an assistant to the solicitor is a sufficient signing: *Philadelphia v. Meighan*, 15 D. R. 10.

"The kind and character of the work done" is sufficiently set out in claim stating, "the paving of North Seventh Street on the east side thereof

on front of the above described property" and these averments are followed by a statement of the number of square yards of paving, and the cost per yard. It is not necessary to state the materials of which the pavement was constructed: *Allentown to use v. Ackerman*, 37 *Super. Ct.* 363, *affirming* 2 *Leh. Co. L. J.* 236.

Under clause 7 the lien must aver that notice of an intention to file a municipal lien for abating a nuisance was served on the registered owner, if there be one, and must state when and how the notice was served and must set forth the kind and character of the work done. A claim for a lump sum for "regrading and repairing sideyards with cement" without specifying the amount of work done, the number of feet of regrading and paving and the price paid for the same, is defective and will be stricken off: *Philadelphiu v. Lewis*, 40 *Pa. C. C.* 698, *s. c.* 22 *D. R.* 176.

A municipal lien is not invalid for uncertainty as to kind and character of the work done when it is based on a report of viewers who were appointed to assess the damages and benefits for grading, paving and curbing a named street: *Township of Stowe v. Sterrett*, 66 *P. L. J.* 709.

Likewise a claim signed "The City of Allentown, to use of the Barber Asphalt Paving Co., by M. P. Schantz, Attorney for use plaintiff" is properly signed. Notice to owner under clause 7 is not required before paving a street, nor is it necessary to set forth in claim the notice provided in Section 1687. A municipal claim may be stricken from the record upon sufficient cause shown; the procedure provided by the Act of 1901 is not exclusive: *Allentown, to use of Barber Asphalt Paving Co. v. Light*, 15 *D. R.* 619.

The notice spoken of under clause 7 is that provided for in section 1686. *Allentown, to use of Barber Asphalt Paving Co. v. Light*, 15 *D. R.* 619; *City of York v. Miller*, 254 *Pa.* 436; *Philadelphiu to use v. Kinkaid et al.*, 24 *D. R.* 287.

A municipal lien for a sewer is sufficient which sets out the size of the sewer, its material, its length in front of defendant's property, the price per foot, the length and price per foot of the house connections, together with the title and date of approval of the ordinance under which the work was done: *Erie City v. Willis*, 26 *Super. Ct.* 459.

Upon motion to strike off municipal lien for sewer on ground that lien is for something more than cost of construction of sewer and which is not separately valued, court is bound to consider only averment in lien and if it conforms to act of assembly lien will not be stricken off: *Prospect Park Boro. v. Duhring*, 14 *Del.* 315.

It is not necessary to state in the claim filed for lien what was done by the secretary of council as to notice of how the assessment was made or apportioned: *McDonald Borough v. Williams*, 41 *Pa. C. C.* 157. It is not necessary to state that the city engineer made a certificate stating the time of the completion of the improvement and filed it with the city clerk, and that no notice was given to the defendant of the time and place of making the assessment: *Allentown to use v. Ackerman*, 37 *Super. Ct.* 363, *affirming* 2 *Leh.* 236.

For the authority under which a lien is filed, it is sufficient to designate the number and date of the ordinance and to say "by virtue of the Acts of Assembly of Pennsylvania relating thereto." The claim may be amended and the question of interest may be determined on the merits. In assessing for sewers, the council may allow for corner locations and irregularly shaped lots: *Dunmore Borough v. Knapp*, 21 *Lack. J.* 381, *s. c.* 12, *M. L. R.* 146.

1691. The property described in tax claims shall include the whole property against which the tax is levied. The property described in municipal claims may include the whole contiguous property, or it may include only the lot in front of or upon which the work is done or to which service is supplied, of such depth as is usual in properties of the same kind or character in the particular neighborhood. No municipal claim or tax claim shall be invalid by reason of including therein property to a greater depth than as above provided; but the court in which the same is filed may, at any time prior to judgment thereon but not afterwards, upon it appearing that such claim includes property to a greater depth than is hereby made subject to such claim, limit the lien thereof to the proper depth. In all cases where a tax is levied on or filed against separate and distinct properties, in one amount covering all, the proper public authority shall, if tendered with all costs, if any, accept payment of the portion of the whole amount of said tax chargeable upon each or any of the separate and distinct properties so charged together, according to the tax rate and assessed valuation thereof, and payment and satisfaction of any one portion may be made without prejudice to the claim against the remainder.

Sec. 12, Act of June 4, 1901, P. L. 364, as amended by Sec. 4, Act of May 28, 1915, P. L. 599.

1692. Any person having an interest in the property, whensoever acquired, may, after ten days prior notice in writing, by leave of court, intervene as a party defendant and make defense thereto, with the same effect as if he had been originally named as a defendant in the claim filed. And the claimant may by writing filed at his costs, strike off the name of any defendant therein; and may substitute as a defendant, and issue a scire facias against, any person who may have any interest therein as owner, or who is the personal representative of an owner who has died either before or after filing the claim, but such substitution shall always be without prejudice to any intervening rights.

Sec. 13, Act of June 4, 1901, P. L. 364, as amended by Sec. 5, Act of May 28, 1915, P. L. 599.

On the trial of a municipal lien where it appears that the defendant named is dead, the trial judge commits no error in refusing to permit a suggestion of the death of the defendant to be filed, where it appears that neither the heirs of the decedent nor any other persons, claiming title have registered their title, or have intervened or asked to intervene as parties defendant: *Philadelphia v. Dale*, 56 Super. Ct. 342.

1693. In all cases where a tax or municipal claim is levied on or filed against separate and distinct properties as one estate, it shall and may be lawful for the proper public authority, either before or

after filing a claim therefor, to apportion the same ratably upon the separate and distinct properties so assessed together. And the court in which the claim is filed, on proof that the properties were separate and distinct at the time the tax was levied or the work was done, shall at any stage of the proceedings, apportion the charge against such properties. When apportioned, they shall be treated and considered in all respects as if separate and distinct claims had been filed; and payment and satisfaction of any one portion may be made without prejudice to the claim as against the rest.

Sec. 14, Act of June 4, 1901, P. L. 364.

Where defendants were in error jointly assessed as being the owners of two certain lots an apportionment can be made under this section: *Borough of Ligonier v. Deeds et al.*, 3 West 200.

A municipal lien for a sidewalk may be filed against a number of lots in a borough described as consecutively numbered where it appears that the lots are contiguous, are not held by a separate title, are not used for separate or district purposes, and that the improvement was made at one time, under one ordinance and one contract. The fact that a fence was between two two of the lots, without more, will not invalidate the lien: *Prospect Park Borough v. McCouch*, 52 Super. Ct. 527.

A municipal claim may be filed for a sidewalk which includes the sidewalks on two streets, where property is located at the corner of the two streets and is but a single property: *York City v. Beitzel*, 41 Super. Ct. 194, reversing 21 York 100, 2 Lch. 315.

1694. Any defendant named in the claim, or any person allowed to intervene and defend thereagainst, may, at any stage of the proceedings, present his petition, under oath or affirmation, setting forth that he has a defence in whole or in part thereto, and of what it consists; and praying that a rule be granted upon the claimant to file an affidavit of the amount claimed by him, and to show cause why the petitioner should not have leave to pay money into court; and in the case of a municipal claim, to enter security in lieu of the claim; whereupon a rule shall be granted as prayed for. Upon the pleadings filed, or from the claim and the affidavit of defence, and without a petition where an affidavit of defence has been filed, the court shall determine how much of the claim is admitted or not sufficiently denied; and shall enter a decree that upon the payment by such petitioner to the claimant of the amount thus found to be due, with interest and costs if anything be found to be due, or upon payment into court, if the claimant refuses to accept the same, and upon payment into court of a sum sufficient to cover the balance claimed, with interest and costs, or upon the entry of approved security in the case of a municipal claim, that such claim shall be wholly discharged as a lien against the property described therein, and shall be stricken from the judgment index. Thereafter the material disputed facts, if any, shall be tried by a jury, without further

pleadings, with the same effect as if a writ of scire facias had duly issued upon said claim, to recover the balance thereof; but the jury shall be sworn to try the issues between the claimant and the parties who paid the fund into court or entered security, and verdict, judgment and payment, or execution, shall follow as in other cases. The same course may be pursued, at the instance of any owner, where the claim has not in fact been filed, and if, in that event, the petitioner complies with the decree made, the money paid into court or security entered shall stand in lieu of the claim, and the latter shall not be filed, and if filed shall be stricken off upon motion.

Sec. 15, Act of June 4, 1901, P. L. 364.

Upon presentation of a proper petition, it is the duty of the court to determine from the pleadings filed how much of the claim is admitted or not sufficiently denied; if a part of it is sufficiently denied then it is the right of the defendant to tender payment of the balance to the municipal authorities, pay into the court or give security for the amount in dispute and have the claim stricken from the judgment index. Thereafter the material, disputed facts, if any, are to be determined in the manner provided by the statute: *Sharpsville Boro, v. Randall*, 73 Super. Ct. 61.

This section provides an adequate legal remedy to prevent filing municipal paving claims; therefore, an injunction should not issue on the ground of irreparable mischief. Discussion concerning joinder of parties in injunction application: *Geesey et al., v. City of York*, 25 D. R. 111, s. c. 28 York 203, affirmed in 254 Pa. 397.

1695. Any party named as defendant in the claim filed, or admitted to defend thereagainst, may file, as of course, and serve a notice upon the claimant or upon the counsel of record to issue a scire facias thereon, within fifteen days after notice so to do. If no scire facias be issued within fifteen days after the affidavit of service of notice is filed of record, the claim shall be stricken off by court upon motion. If a scire facias be issued in accordance with such notice, the claimant, shall not be permitted to discontinue the same, or suffer a nonsuit upon the trial thereof, but a compulsory nonsuit shall be entered by the court if the claimant does not appear, or withdraws or for reason fails to maintain his claim.

Sec. 16, Act of June 4, 1901, P. L. 364.

1696. The claim shall be sued by writ of scire facias, and the form thereof shall be substantially as follows:

The Commonwealth of Pennsylvania to (names of the parties defendant) Greeting:

Whereas, The (city, borough, or other municipality as the case may be), on the. day of....., A. D. 1....., filed its claim in our court of common pleas of..... County, at No.....Term, 1....., M. L. D., for the sum of \$....., with interest from the.....day of....., 1....., for

(give the improvement, or that for which the claim is filed), against the following property situate in (give location and brief description of the property), owned or reputed to be owned by you.

And whereas, We have been given to understand that said claim is still due and unpaid, and remains a lien against the said property;

Now, you are hereby notified to file your affidavit of defence to said claim, if defence you have thereto, in the office of the prothonotary of our said court, within fifteen days after the service of this writ upon you. If no affidavit of defence be filed within said time, judgment may be entered against you for the whole claim, and the property described in the claim be sold to recover the amount thereof.

Witness the Honorable.....President Judge
of our said Court, this.....day of....., A. D.
1....

.....Prothonotary.

(Seal)

The claimant, when he files his praecipe for the writ of scire facias, may direct the prothonotary to add and insert the names of any persons whom the claimant may know to have an interest in the premises, and the scire facias shall be issued containing such additional names. But the parties to the claim may agree upon an amicable scire facias, upon such terms as may be agreed upon, with the same effect as if a scire facias, in the form aforesaid, had been duly issued, served, and returned: or the defendants, or any of them, may waive the issue of a scire facias, and appear with like effect as if the scire facias had been issued and served.

Sec. 17, Act of June 4, 1901, P. L. 364, as amended by Sec. 1, Act of May 6, 1909, P. L. 452.

See sections 1687, 1699, 1714 with notes.

A writ of scire facias issued on a recorded municipal lien in the form prescribed by this section entitled the plaintiff to judgment in the absence of sufficient affidavit of defence: *Borough of West Reading v. Schlegel et al.*, 9 *Berks* 169.

A bill in equity to restrain a municipality from filing liens and collecting paving claims against certain property owners will be dismissed because the plaintiffs have a full and adequate remedy at law by setting up any matter of defence in a hearing on a scire facias: *Geesey v. City of York*, 254 *Pa.* 397, *affirming* 25 *D. R.* 111, 28 *York* 203.

A plaintiff cannot have a verdict unless his proofs satisfy every requirement of the Act. The regularity of a municipal lien as to form and contents must be taken advantage of either by demurrer or on a motion to strike off and these can be employed only where there is a defect apparent on the record. Where defendant goes to trial without objection to the form of the lien it is too late to enter such objection at the trial. Facts averred in the claim and not traversed by the defendant are taken as admitted: *City of York v. Miller*, 254 *Pa.* 436, *affirming* 60 *Super. Ct.* 407, *reversing* 28 *York* 17.

In a trial on a scire facias sur municipal lien for paving the defendant may show that the improvement was negligently made, and not completed, and that by such failure the defendant suffered damage. In such a suit by a use plaintiff the defendant may set off money which the use plaintiff owed him: *York City, to use v. Miller*, 60 *Super. Ct.* 407, reversing 28 *York* 17.

A writ of scire facias issued after the passage of the Act of June 4, 1901, P. L. 364, to enforce the collection of a municipal claim for paving which had accrued and been assessed prior to the passage of the Act of 1901, must follow the form and procedure prescribed in the earlier Act of May 16, 1891, P. L. 69: *Scranton City v. Stokes*, Nos. 1 and 2, 28 *Super. Ct.* 434, 437.

The service of a scire facias to revive a lien must be made within the five year period and must conform to the requirements of this act in both the manner and time of service: *Scranton City v. Scranton Hosiery Mills*, 44 *Pa. C. C.* 87, s. c. 16 *Lack. J.* 275. See Section 1688.

An affidavit of defense to a municipal claim which is filed after the period of fifteen days but before plaintiff moves for judgment, is in time to prevent judgment being entered, provided the affidavit is sufficient: *City of Scranton v. McAnulty*, 26 *D. R.* 66, s. c. 8 *M. L. R.* 31, 17 *Lack. J.* 107.

Whether or not the land is rural is a question for the jury on a scire facias sur municipal lien: *Prospect Park Borough v. Wyndham*, 8 *M. L. R.* 55, s. c. 14 *Del.* 117.

Concerning sufficiency of affidavit of defense, see *Carriek v. Canevin*, 243 *Pa.* 283, *Carriek v. Canevin*, 55 *Super. Ct.* 233.

In a contest on a scire facias issued on a lien filed to use "The general rule undoubtedly is that the rights of the legal plaintiff only can be regarded and must prevail": *Allentown to use v. Ackerman*, 37 *Super. Ct.* 363, affirming 2 *Lch. Co. L. J.* 236.

On the trial of a scire facias sur municipal lien where it appears that the writ was served on the defendant who appeared regularly and made no objection to the form of the writ either in his affidavit of defense or otherwise, and it also appeared that the writ could not be found, the defendant has no standing, after both sides had closed to ask for binding instructions in his favor, because the writ had not been offered in evidence, and because the writ was invalid. Plaintiff was not bound to offer the writ in evidence: *Scranton v. Kochler*, 36 *Super. Ct.* 95, affirming 8 *Lack. J.* 83.

A municipal claim which recites the authority under which the work was done and sets forth in detail everything required by section 1690, is sufficient to require the defendant to file an affidavit of defense to a scire facias issued upon it: *York City v. Beitzel*, 41 *Super. Ct.* 194, reversing 21 *York* 100, 2 *Lch. Co. L. J.* 315.

1697. The sheriff to whom the scire facias is given for service shall add to the writ, as parties defendant, all persons, other than those named therein, who may be found in possession of the property described or any part thereof, and in case no one is in possession, he shall post a true copy of the writ on the most public part of the said property; and he shall add to the said writ the names of any persons, not already named therein, whom he may ascertain to have an interest in the property described, or any part thereof: which writ shall then be further served, as follows:—

(a) By serving, as in the case of a summons, such of those names in the writ, or added thereto, as may be found in the county in which the writ issued; and,

(b) Where the sheriff has information that those named in the writ, or added thereto, or any of them, may be found in any other county of this Commonwealth, the said persons shall be served, as in case of a summons, by the sheriff of the county in which the said defendants or any of them may reside, he being deputed for that purpose by the sheriff of the county in which the writ issues; and,

(c) In case any of those named in the writ or added thereto, cannot be found, or their residences within this Commonwealth are unknown, or in case they reside without the Commonwealth, the said writ may be served by advertising a copy thereof, or a brief notice of the contents of the same, once a week for three successive weeks, in one newspaper of general circulation in the county, and in the legal periodical, if any, designated by the court for that purpose: Provided, however, That any defendant may accept service of said writ, in person or by counsel, with the same effect as if duly served therewith by the sheriff.

Where the said writ, or the brief notice of the contents thereof, have been advertised as aforesaid, the same shall have the same effect as if the writ had been personally served: and all those named therein, as to whom publication has been made, shall file their affidavit of defence, as required by the said writ, within fifteen days after the date of the last weekly advertisement of the said writ. Service of any such writ may be made at any time within three months from the date on which it was issued, but it shall be served and returned at the earliest date possible, and the plaintiff may require its return at any time, whether or not it be actually served.

Sec. 18, Act of June 4, 1901, P. L. 364, as amended by Sec. 2, Act of May 6, 1909, P. L. 452.

The proceedings on a *scire facias sur municipal lien* are regulated by this section, by the operation of which the return of *nihil habet* is abolished. The writ must be served on all the parties defendant in some one of the several ways therein prescribed, and that, within the period of three months from the date of issue in default of which the sheriff's return will be set aside on motion: *City of Scranton v. Scranton Hosiery Mills*, 16 *Lack. J.* 191, and 275 *s. c.* 44 *Pa. C. C.* 87.

Under sub-division "c" of this section, if a defendant named in a writ of *scire facias sur municipal lien* cannot be found or has no known residence within the Commonwealth, the writ must be served by advertisement; a return of service "by mailing him a true and attested copy of the within writ in a registered letter," is defective, and will be set aside: *Dunmore Borough v. Burke et al.*, 26 *D. R.* 1057, *s. c.* 18 *Lack. J.* 113.

The Act of May 3, 1915, P. L. 242, requiring the sheriff to advertise in German, Italian and Yiddish newspapers has been declared unconstitutional in *Phila. v. Unknown*, 24 *D. R.* 753.

Irregularities in the sheriff's return of the service of a writ showing failure to do certain things prescribed by statute, which, however, do not affect the right of the court to enter judgment, are cured by the entry of judgment and the sale of the property: *Tiegel v. Love*, 62 P. L. J. 532, *Affirmed in 61 Super. Ct. 149*.

In a scire facias proceeding on a municipal lien where the present registered owner is not included as a defendant, or, when included, is not properly served with notice, he cannot be bound by the proceeding. In such a case the entry of the general appearance by the present owner nine years after the claim was filed cannot be construed as a waiver of the defense that the lien of the claim had expired four years before the appearance was entered: *Philadelphia to use v. Mason*, 37 Super. Ct. 478.

Service on the defendant against whom the claim was filed, but who had conveyed his title before the scire facias issued, is not sufficient to support a judgment. The purpose of the act as amended was to provide for notice of the scire facias to the real party in interest, so that he should not be at the inevitable hazard of having his property taken in execution without opportunity either to make a valid defense or to save costs if he had no defense: *City of Scranton v. Meadow Brook Land Co.*, 20 Luck. J. 33; 28 D. R. 882.

Where a sheriff's return of the service of a writ of scire facias sur municipal lien does not comply with the act, the return may be amended even after a sheriff's sale and deed to the purchaser, so as to conform to the facts. A sheriff's return may always be amended so as to conform to the truth, unless some new right has arisen in the meantime founded upon the defective return. Where such an amendment has been allowed, and no appeal taken therefrom, the correctness of the allowance cannot be attacked in a collateral proceeding: *Maloney v. Simpson*, 226 Pa. 479.

See notes to section 1696.

Service of a writ of scire facias sur municipal lien, in order to support a judgment thereon, must conform strictly to the act. A return of service by posting a true copy of the writ on the liened premises is ineffective, unless it also show the reason for the posting, namely, that the possession was found to be vacant: *Scranton v. Kennedy*, 22 Luck. J. 183.

1698. If no affidavit of defense be filed within the time designated, judgment may be entered and damages assessed by the prothonotary by default, for want thereof. Such assessment shall include a five per cent fee for collection to plaintiff's attorney, not exceeding, however, twenty dollars. If an affidavit of defense be filed, a rule may be taken for judgment for want of a sufficient affidavit of defense, or for so much of the claim as is insufficiently denied, with leave to proceed for the residue. The defendant, may, by rule, require the plaintiff to reply, under oath or affirmation, to the statements set forth in the affidavit of defense, and after the replication has been filed may move for judgment on the whole record.

Sec. 19, Act of June 4, 1901, P. L. 364.

See section 1719 with notes.

The "five per cent fee for collection to plaintiff's attorney, not exceeding, however, twenty dollars," are solicitor's fees; the title to which is in the municipality and not in the attorney at all: *Pittsburgh v. O'Brien*, 239 Pa. 60, *affirming* 60 P. L. J. 545.

Where the record shows a municipality proceeds to curb and pave a sidewalk, after bringing it down to proper grade, without giving the property owner an opportunity to do it, the owner can ask for a judgment on the whole record: *Chester City v. Lane*, Nos. 1, 2, 3, 4, 24 *Super. Ct.* 359-367-368-369.

A scire facias sur municipal claim takes the place of a statement and the defendant must file an affidavit of defense to it to prevent judgment from being taken against him: *Oil City v. Hartwell*, 164 *Pa.* 348.

1699. Tax claims and municipal claims shall be prima facie evidence of the facts averred therein in all cases; and the averments in both tax and municipal claims shall be conclusive evidence of the facts averred therein, except in the particulars in which those averments shall be specifically denied by the affidavit of defense, or amendment thereof duly allowed. A compulsory nonsuit, upon trial, shall be equivalent to a verdict for defendant, whether the plaintiff appeared or not. If plaintiff recovers a verdict, upon trial, in excess of the amount admitted by the defendant in his affidavit of defense or pleadings, he shall be entitled to an attorney's fee for collection, equal to five per centum of such excess, but not exceeding fifty dollars.

Sec. 20, Act of June 4, 1901, P. L. 364, as amended by Sec. 6, Act of May 28, 1915, P. L. 599.

See section 1690 with notes.

The rule that in the absence of a rule of court the affidavit of defense when it has presented a summary judgment has performed its whole office and is not before the court on the trial unless put in evidence as an admission against the party making it is unaffected, except when facts are averred in the lien, and not denied in the affidavit of defense: *City of York v. Miller*, 254 *Pa.* 436, affirming 60 *Super. Ct.* 407, reversing 28 *York* 17.

On the trial of a scire facias sur municipal lien for paving, where the municipality offers the lien as prima facie evidence, and the lien recites the acts and ordinances under which the work was done, the municipality is not required to offer the ordinances in evidence, if the affidavit of defense does not challenge the authority of the municipality to make the improvement under the ordinances or deny that such ordinances imposed the cost on the abutting owners: *York City v. Holtzapfel*, 67 *Super. Ct.* 596, affirming 7 *Leh.* 193, 30 *York* 173.

Upon motion to strike off municipal lien for sewer on ground that lien is for something more than cost of construction of sewer, and which is not separately valued, court is bound to consider only averment in lien, and if it conforms to act of Assembly, lien will not be stricken off: *Prospect Park Borough v. Duhring*, 14 *Del.* 315.

Where a lien avers that the amount of the claim is the cost of constructing the sewer in front of the defendant's property (in which were included incidental expenses, advertising, engineer's service and like charges.) This averment in the claim is made prima facie evidence: *Prospect Park Borough v. Wyndham* 8 *M. L. R.* 55, s. c. 14 *Del.* 117.

A claim conforming to the requirements of the law makes it evidence of the facts thus necessarily averred, and it is not incumbent on the plaintiff in the presentation of its case in chief, to disprove allegations of the affidavit of defense: *Somerset Borough v. Sweitzer*, 54 *Super. Ct.* 283; *Allentown, to use, v. Ackerman*, 37 *Super. Ct.* 363, affirming 2 *Leh.* 236.

The property which directly abuts on a public street is, under our statutes, subject to the charge for the construction and maintenance of the sidewalk directly in front thereof, without regard to whether the owner of that property is also possessed of the fee in the land over which the street is located, so that an averment in the affidavit of defense that the pavement is not upon the property of the defendant, but upon the property of the city, is immaterial. Likewise the affidavit of defense is insufficient which avers that the municipality had adopted a plan which if carried into effect by proper municipal action would result in the widening of the highway; or which avers that the pavement was not constructed according to the ordinance, and fails to state in what respect the construction departed from the provisions of the ordinance; or which avers (when the property was located at the corner of two streets), that the claim was "not apportioned to the several pavements on the said street," where there is no allegation that the land against which the claim was filed was not a single property: *York City v. Beitzel*, 41 Super. Ct. 194, reversing 21 York 100, 2 Lch. 315.

A municipal claim filed which contains an averment of all the matters required by this statute serves as a statement and the averments are made conclusive evidence by the above section, of the facts averred therein, except in the particulars in which these averments may be specifically denied by affidavits of defense. It would seem to follow, therefore, that only such defenses may be made to that statement of claim as the Legislature has provided: *Berwick Borough v. Sponsler et al.*, 11 M. L. R. 238, s. c. 20 Luz. L. R. 399.

1700. The judgment upon such claim may be revived by writ of scire facias in the following form: The Commonwealth of Pennsylvania, to C. D. and E. F.,

Greeting:

Whereas, A. B., claimant, on the.....day of....., A. D. 1....., recovered judgment in the sum of..... dollars, against you, that the following described property be sold to satisfy the same:

(Here describe the property in full.)

And whereas, we have been given to understand that though judgment, as aforesaid, was rendered, yet the amount thereof is still due and unpaid, and remains as a lien against said property: Now, you are hereby notified to file your affidavit of defense to A. B.'s claim upon said judgment, if any defense you have, in the office of the prothonotary of our said court, within fifteen days after service of this writ upon you. If no affidavit of defense be filed within that time, said judgment may be revived against you for the amount set forth with interest from the time of its recovery, and said property be sold to recover the whole thereof.

Witness the Hon....., President Judge of our said court, this.....day of....., A. D. 1.....
(Seal.) Prothonotary.

But the parties to the judgment may agree upon an amicable scire facias to revive, or to an amicable judgment of revival, upon such terms as may be agreed upon, with the same effect as if a scire facias in the form aforesaid had been duly issued, served and returned.

Sec. 21, Act of June 4, 1901, P. L. 364.

A municipal claim, filed before the passage of the Act of June 4, 1901, P. L. 364, for the cost of removing a nuisance from a lot and not revived under the law as it then stood, the scire facias not having been served and prosecuted to judgment within five years from the date of the filing of the claim, the lien has been lost and all subsequent proceedings were a nullity: *City of Phila. v. Elliott*, 23 D. R. 613.

1701. Said writ of scire facias shall be served, and the proceedings thereon shall be conducted, as to persons who are found by the sheriff, in the manner hereinbefore provided for the original scire facias sur claim; but, in any and all events, two returns of nihil habet to the writs to revive shall be equivalent to personal service upon the defendants. The practice and procedure following said scire facias to revive, so far as applicable, shall be the same as in the case of the original scire facias to collect the claim.

Sec. 22, Act of June 4, 1901, P. L. 364, as amended by Sec. 7, Act of May 28, 1915, P. L. 539.

1702. The practice and procedure following said scire facias to revive, so far as applicable, shall be the same as in the case of the original scire facias to collect the claim.

Sec. 23, Act of June 4, 1901, P. L. 364.

1703. All judgments for the plaintiff, whether on the original scire facias or any scire facias to revive, shall be de terris only, and shall be recovered out of the property bound by the lien, and not otherwise; but the costs, whether as against the plaintiff, or the defendant actually defending against the claim, may be recovered by execution as in personal actions.

Sec. 24, Act of June 4, 1901, P. L. 364.

1704. After the expiration of twenty days from the recovery of judgment, whether on the original scire facias or any scire facias to revive, except in cases where the property named is essential to the business of a quasi public corporation, the court shall, upon the petition of the plaintiff, appoint a sequestrator of the rents, issues and profits of the property bound by the judgment, unless in the meantime an appeal be taken, and approved security given to operate as a supersedeas. If the owner against whom the judgment is entered be in possession of the property sequestered, or the party in possession refuse to pay a fair rent, the court shall, upon petition filed and served, grant a rule, and, if it be made absolute, award a writ in the

nature of a writ of habere facias possessionem, directed to the owner, commanding him to deliver such possession to the sequestrator within fifteen days thereafter, unless such property be occupied by the owner and his family for a home, in which case he shall be entitled to retain possession for a period of three months from the time the petition was served upon him.

Sec. 25, Act of June 4, 1901, P. L. 364.

1705. Every claim filed, scire facias issued, verdict recovered and judgment entered, in accordance with the provisions of this act, shall be docketed in appropriate dockets, and, except as herein provided, shall be entered upon the judgment index of the court. When a claim is stricken off or satisfied, the name of a defendant stricken out, a scire facias discontinued or quashed, or a verdict or judgment stricken off or satisfied, a note thereof shall be made on such docket or dockets; Provided, however, That in counties in which the filing of liens for county taxes was authorized by law prior to the passage of the act of one thousand nine hundred and one, aforesaid, the method of filing, entering, docketing, and indexing liens, for county, road, poor, school, borough, school building, township, and other taxes assessed in boroughs and townships, in such counties, shall remain and be continued thereafter, in the same manner and form as in use prior to the passage of the said act, approved June fourth, one thousand nine hundred and one, notwithstanding the passage of the same.

Sec. 26, Act of June 4, 1901, P. L. 364, as amended by Sec. 1, Act of April 3, 1903, P. L. 152.

See notes to section 1706.

Where a municipal lien was indexed in the name of "Albert J. Foehl," instead of "J. Albert Foehl," defendant's correct name, and there was no locality index, a purchaser of the defendant's property, without actual notice of the lien, takes it free of the lien: *Lancaster City v. Foehl*, 39 Pa. C. C. 494, s. c. 29 Lane. 147, 21 D. R. 858.

1706. It shall be the duty of the prothonotaries of the courts of common pleas to keep a locality index, in which shall be entered all tax or municipal claims hereafter filed, and upon any written order therefor they shall give a certificate of search, showing all the claims filed against any property. For so doing they shall receive the sum of twenty-five cents, and five cents additional for each claim certified, and no more.

Sec. 27, Act of June 4, 1901, P. L. 364.

See notes to Section 1705.

The prothonotary is entitled to a fee of twenty-five cents for entering upon the locality index: *Zimmerman v. Reading*, 18 D. R. 1911, s. c. 1 Berks 114, 22 York 131.

The direction of the prothonotary to keep a locality index is mandatory, and if a locality index is not kept in the county, and a municipal lien for improvements is entered in the wrong name in the proper indexes, a purchaser of the property assessed, without actual notice of the lien, takes it free of the lien: *Apollo Borough v. Clepper*, 44 Super. Ct. 396.

The neglect of the prothonotary to enter a municipal lien for assessments in Mechanic's Lien Docket, as formerly required by Section 1705, and in the locality index, as required by this section, does not invalidate a municipal lien for assessments for benefits to property as between the parties, nor absolutely bar recovery upon the scire facias issued upon the lien: *Eric City v. Willis*, 26 Super. Ct. 459.

1707. At any time before the property is sold, approved security may be entered for a stay of proceedings until the expiration of one year after the date of filing the claim. The entry of such security by the owner, before the entry of judgment on the claim, shall be equivalent to an admission by him that the property is liable for the claim. After the stay has expired the claimant may proceed upon the claim and the bond given, separately or simultaneously.

Sec. 28, Act of June 4, 1901, P. L. 364.

1708. Execution upon any judgment recovered upon any such claim, except where the property named is essential to the business of a quasi-public corporation, shall be by writ of levavi facias, in the following form:

The Commonwealth of Pennsylvania:

To the Sheriff of..... County, Greeting:

Whereas, A. B., claimant, on the.....day of.....
Anno Domini, 1....., recovered judgment in the sum of
.....dollars, with interest from the.....day of
....., Anno Domini 1....., and the costs
amounting to.....dollars, in our court of common pleas
of said county of..... Term..... No.....
M. L. D. against C. D. and E. F., that the following described
property in your bailiwick be sold to satisfy the same, viz:

(Here describe the property in full.)

Now, this is to command you that you expose the said property to sale by public vendue and outcry, after due advertisement according to law, and that return of said sale, with the moneys realized thereby and this writ, you make to our said court on the day of.....
..... Anno Domini 1.....

Witness the Honorable....., president judge
of our said court, this.....day of.....
Anno Domini 1:.....

Advertisement of such sale shall be made, and the deed to the purchaser shall be executed, acknowledged and delivered, as in other real estate sales by the sheriff.

Sec. 29, Act of June 4, 1901, P. L. 364.

1709. The plaintiff in any judgment recovered on a tax or municipal claim may, upon paying the sheriff's costs, fix an upset price to be realized at any sale under such judgment, sufficient to pay all taxes and municipal claims, and all accrued but unfilled taxes and claims, in full. No sale shall be made on a judgment recovered on a tax or municipal claim except for a sum sufficient to pay all taxes and municipal claims in full, except as hereinafter provided, and the plaintiff in such judgment may purchase the property at such sale, for that sum, if no one bids a higher price therefor.

Sec. 30, Act of June 4, 1901, P. L. 364, as amended by Sec. 8, Act of May 28, 1915, P. L. 599.

1710. Where judgment is recovered upon any claim, the property named in which is essential to the business of a quasi public corporation, the claimant shall have execution thereupon as in other cases of judgments against such corporations. Upon the distribution of any fund realized by a sale of the franchises, and the whole or any part of the assets of the corporation, the court shall determine the actual value of the property bound by the lien, and the claim shall be preferred with such other claims, to the extent of the value thus determined.

Sec. 31, Act of June 4, 1901, P. L. 364.

1711. The lien of a tax or a municipal claim shall not be divested by any judicial sale of the property liened, where the amount due is indefinite or undetermined, or where the same is not due and payable; nor shall the lien of a tax or municipal claim be divested by any judicial sale of the property liened, as respects so much thereof as the proceeds of such sale may be insufficient to discharge; nor, except as hereinafter provided, shall a judicial sale of the property liened, under a judgment obtained on a tax or municipal claim, discharge the lien of any other tax or municipal claim than that upon which said sale is had, except to the extent that the proceeds realized are sufficient for its payment, after paying the costs and expenses of the sale, and of the writ upon which it was made, and any other prior tax or municipal claims to which the fund may first be applicable. On any such sale being made all tax claims shall be paid out of the proceeds thereof: first, the oldest tax having priority; and municipal claims shall be paid next, the oldest in point of lien having priority. Mortgages, groundrents, and other charges on or estates in the property which were recorded, or created where recording is

not required, before any tax other than for the current year accrue, or before the actual doing of the work in front of or upon the particular property for which the municipal claim is filed, shall not be disturbed by such sale unless a prior lien is also discharged thereby. In case the property be not sold for a sum sufficient to pay all taxes and municipal claims, together with the costs thereon, the plaintiff in any such claim may postpone the sale, without payment of costs, and file his petition setting forth that more than one year has elapsed since the filing of his claim; that he has exposed the property to sheriff's sale thereunder, and was unable to obtain a bid sufficient to pay the upset-price in full; and, if a municipal claimant other than a municipality, that he will bid sufficient to pay the upset price, and upon the production of searches or a title insurance policy showing the state of the record and the ownership of the property, and of all tax and municipal claims, mortgages, groundrents, or other charges on or estates in the land, the court shall grant a rule upon all parties thus shown to be interested to appear and show cause why a decree should not be made that said property be sold, freed and cleared of their respective claims, mortgages, charges, and estates. If, upon a hearing thereafter, the court is satisfied that service has been made of said rule upon the parties respondent, in the manner provided in the act to which this is an amendment for the service of writs of scire facias to obtain judgments upon tax and municipal claims, and that the facts stated in the petition be true, it shall order and decree that said property be sold at a subsequent sheriff's sale day, to be fixed by the court without further advertisement, clear of all claims, liens, mortgages, charges, and estates, to the highest bidder at such sale; and the proceeds realized therefrom shall be distributed in accordance with the priority of such claims; and the purchaser at such sale shall take, and forever thereafter have, an absolute title to the property sold, free and discharged of all tax and municipal claims, liens, mortgages, charges, and estates of whatsoever kind, subject only to the right of redemption as provided by law.

Any person interested may, at any time before the sale, pay the petitioner the whole of his claim, with interest and costs, whereupon the proceedings on petition shall at once determine.

For the purpose of enabling the petitioner in any such proceeding to give the notice required, he may take the testimony of the defendant in the claim, or of any other person whom he may have reason to believe has knowledge of the whereabouts of any of the parties respondent, either by deposition, commission, or letters rogatory.

Any county, municipality, township, or school district, being a claimant, shall have the right, and is hereby empowered, to bid and become the purchaser of the property at such sale; and while the

said property, so purchased, is held and owned by either a county or a municipality, township or school district, it shall not be subject to tax claims, unless it be redeemed by the former owner or other person having the right to redeem, as provided by the act to which this is an amendment. If, however, a county, municipality, township, or school district shall become the purchaser at said sale, the former owner or other person, desiring to redeem, shall pay all taxes and municipal claims accrued and chargeable against the property prior to the sale thereof, together with the costs and interest thereon, and also all taxes and claims, whether filed or not, which would have accrued and become chargeable against the property had the same been purchased at the sale by some party other than the county, city, or other municipal division.

Upon the delivery by the sheriff of a deed for any property sold under a tax or municipal claim, the judgment upon which such sale was had shall thereupon and forever thereafter be final and conclusive as to all matters of defense which could have been raised in the proceeding, including payment, and no error or irregularity in obtaining or entering of such judgment shall affect the validity thereof.

Sec. 32, Act of June 4, 1901, P. L. 364, as amended by Sec. 9, Act of May 28, 1915, P. L. 599.

See sections 1682, 1683, 1720, with notes.

Where property failed to bring the amount of a municipal claim at a judicial sale, such municipal lien will be preserved from divestiture, unless the sale is on the municipal lien itself. This section does not have the effect of preserving a municipal lien against the property sold upon such lien, as the act provides a remedy if the bid is insufficient to pay the claim: *Wainright, Jr., v. Mooney*, 64 P. L. J. 267, s. c. 14 Del. 66.

The provisions that the lien of a tax or municipal claim will not be divested by judicial sale as respects so much thereof as the proceeds of such sale may be insufficient to discharge, applies to a sale on mortgage executed and recorded prior to the approval of the act containing this provision, and taxes assessed subsequent to the passage of that act and of the Act of June 4, 1901, P. L. 364, are not divested by a judicial sale on such a prior mortgage: *Clinton County v. Harrisburg Trust Co.*, 39 Pa. C. C. 498, s. c. 21 D. R. 760.

Under the Act of May 23, 1889, P. L. 277, a city of the third class having filed a lien for paving subsequent to the lien of a judgment creditor, and the property against which the liens were filed having been sold by judicial process, if the proceeds of the sale being applied to the liens in their order reaches and pays part of the municipal lien it will be discharged to the extent of the payment; otherwise it remains a lien that cannot be divested by any judicial sale except a sale on an execution by proceeding on the lien itself: *Morris v. Hainer*, 16 Pa. C. C. 468, s. c. 4 D. R. 635, 43 P. L. J. O. S. 133.

1712. The owner of any property sold under a tax or municipal claim, or his assignees, or any party whose lien or estate has been

discharged thereby, may redeem the same at any time within one year from the date of the acknowledgement of the sheriff's deed therefor, upon payment of the amount bid at such sale; the cost of drawing, acknowledging and recording the sheriff's deed; the amount of all taxes and municipal claims, whether or not entered as liens, if actually paid the principal; and interest of estates and encumbrances, not discharged by the sale and actually paid; the insurance upon the property, and other charges and necessary expenses on the property, actually paid, less rents or other income therefrom, and a sum equal to interest at the rate of ten per centum thereon, from the time of each of such payments. If both owner and creditor desire to redeem, the owner shall have the right so to do only in case he pays the creditor's claim in full. If more than one creditor desires to redeem, the one who was lowest in lien at the time of sale shall have the prior right, upon payment in full of the claim of the one higher in lien. Within the year, one who was lower in lien may redeem for (from) one higher in lien who has already redeemed, and the owner may redeem from him; and so on throughout, in each case by paying the claim of the one whose right was higher; and one higher in lien may redeem from one lower in lien, unless his claim is paid; but in each case the right must be exercised within the year. Any person entitled to redeem may present his petition to the proper court, setting forth the facts, and his readiness to pay the redemption money; whereupon the court shall grant a rule to show cause why the purchaser should not reconvey to him the premises sold; and if, upon hearing, the court shall be satisfied of the facts, it shall make the rule absolute, and upon payment being made or tendered, shall enforce it by attachment.

Sec. 33, Act of June 4, 1901, P. L. 364.

1713. Any claim, filed or to be filed, under the provisions of this act, and any judgment recovered thereon may be assigned or transferred to a third party, either absolutely or as collateral security, and such assignee shall have all the rights of the original holder thereof. Where the claim has been paid in full by one of the several defendants therein, whether originally named as such or allowed to intervene and defend, it shall be satisfied of record as to him, and marked to his use as against the other defendants, pro rata, according to their respective interests in the property bound by the claim.

Sec. 34, Act of June 4, 1901, P. L. 364:

1714. Any claim, petition, answer, replication, scire facias, affidavit of defense, or other paper filed of record, may be amended from time to time, by agreement of the parties or by leave of the court, upon petition for that purpose, under oath or affirmation,

setting forth the amendment desired, that the averments therein contained are true in fact, and that by mistake they were omitted from or wrongfully stated in the particulars as to which the amendment is desired. Such amendments shall be of right, saving intervening rights, except that no amendment of the claim shall be allowed, after the time for its filing has expired, which undertakes to substitute an entirely different property from that originally described in the claim; but the description of the property may be amended so as to be made more accurate, as in other cases of amendment. The court may, for cause shown and filed of record, enlarge the time for filing the affidavit of defense, answer or replication, for issuing a scire facias or for entering security, by rule or special or standing order; and any judgment by default may be opened by the court, upon cause shown by interveners or other defendants, as in other cases; but no enlargement of the time for issuing a scire facias shall extend the same beyond the time herein provided for preserving or retaining the lien thereof.

Sec. 35.—Act of June 4, 1901, P. L. 364.

A lien cannot be amended after motion made to strike it off, one and one-half years after filing: *Freeport Borough v. Miller Estate*, 34 *Super. Ct.* 395.

The court will not permit a lien to be amended after the expiration of eight years from the time the claim was filed: *Philadelphia v. Lewis*, 40 *Pa. C. C.* 698. Contra—"There is no limitation as to the time of making amendments, and the reasonable presumption is the act intended that proper amendments can be made at any time during the existence of the lien or course of the trial;" and this is so even after the time for filing the lien has expired, except where the amendment undertakes to substitute an entirely different property: *McDonald Borough v. Williams*, 41 *Pa. C. C.* 157.

A lien may be amended after verdict, and any time before judgment so as to exclude therefrom land improperly included therein: *Borough of Dormont v. Mount Washington Street Railway Company*, No. 1, 63 *P. L. J.* 556.

If the lien does not meet all the requirements of Section 11 of this act, it may be amended in accordance with the facts: *Adamstown Borough v. Hartman*, 36 *Lanc. L. R.* 73, s. c. 10 *M. L. R.* 174, 33 *York* 48, 67 *P. L. J.* 545.

A sheriff's return may always be amended so as to conform to the truth unless some new right has arisen in the meantime founded upon the defective return—and such amendment cannot be attacked in a collateral proceeding: *Maloney v. Simpson*, 226 *Pa.* 479.

Where a borough files a lien against a property for curbing, but the lien misstates the number of the ordinance under which the improvements were authorized, and the mistake is not noticed either in the proceedings to strike off the lien or at the first trial, but is noticed at the second trial after the proper ordinance had been put in evidence, and objection is then made, it is the duty of the trial court to permit the lien to be amended so as to show the true number of the ordinance in accordance with the proofs: *Alliance Borough v. Schwartz*, 53 *Super. Ct.* 448, reversing 13 *North. C. R.* 314 s. c. 4 *M. L. R.* 97.

A motion to amend a municipal lien after verdict to exclude certain land will be refused where mistake is not alleged: *Borough of Dormont v. Mount Washington Street Railway Company, No. 2, 63 P. L. J. 557.*

An amendment to a municipal lien whereby it is intended to exclude certain land after a special verdict has been returned in favor of the plaintiff is not necessary: *Borough of Dormont, v. Mount Washington Street Railway Company, No. 3, 63 P. L. J. 558.*

A municipal lien which fails to set forth the authority on which it is based or that proper notice was given to the defendant as required in Section 1690 may be corrected by amendment under oath or affirmation: *City of Lancaster v. Haller, 35 Lane. L. R. 97, 27 D. R. 863.*

An owner of real estate against which a lien for municipal improvements should have been filed, but which is filed against other land, may consent to an amendment of the lien by which the amount thereof is chargeable against his property, without first securing the consent of the holder of a mortgage whose lien antedates that of the municipal claim. The provisions "saving intervening rights," is for the protection and benefit of the property owner, and those who acquire rights in the property after the filing of a lien erroneously described, and who were misled thereby: *Dunlery Trustee, for use, etc., v. Bell, 61 P. L. J. 259.*

Where a municipality files a municipal lien for a specific sum, being the costs of abating a nuisance, and improperly includes two other items each for a specific amount for which it had no right of lien (the lien not being for the gross sum of all these items), the court may strike off the two improper items without affecting the validity of the lien for the cost of abating the nuisance: *Philadelphia v. Hyde, 48 Super. Ct. 269.*

Where the court on discharging a rule to strike off a municipal lien allows the defendant time within which to file an affidavit of defense, and the defendant instead adopts another course, the plaintiff may enter judgment at the end of such period, for want of an affidavit of defense, in the absence of any allowance by the court of further time, to file an affidavit of defense or application by the defendant for such allowance: *Lansdowne Borough to use v. Hartel, 48 Super. Ct. 430, affirming 11 Del. 356, 458.*

1715. Any rule granted under the provisions of this act may be made returnable at such time as the court may direct, either therein or by rule of court, or by special or standing order. All petitions, answers, and replications shall be under oath or affirmation. Answers must be filed and served within fifteen days after service of the petition; and rules and replications must be filed within fifteen days after service of the last of the answers. Replications must be confined to a reply to new matter, set forth in the answers. The facts averred by either party, and not denied in the answer or replication of the other, shall be taken as true in all subsequent proceedings in the cause, without the necessity for proof thereof, unless amended as herein set forth. Any fact necessarily found by the court in finally determining a rule, shall also be taken as true in all subsequent proceedings in the cause, without the necessity for proof thereof, unless either party, by writing filed and served at least ten

days prior to the time fixed for trial, requires that it be submitted to the jury.

Sec. 36, Act of June 4, 1901, P. L. 364.

1716. Unless otherwise herein provided, all notices, petitions, and rules shall be served upon counsel for the parties interested or upon the parties themselves in the manner bills in equity are served, or upon the owner by leaving a copy with the party in possession of the real estate, or, in default of service in any of the methods stated, then in such manner as the court shall direct.

Sec. 37, Act of June 4, 1901, P. L. 364, as amended by Sec. 10, Act of May 28, 1915, P. L. 599.

1717. Whenever security is required to be given, in accordance with the provisions of this act, it may be approved by the prothonotary, subject to an appeal to the court as in other cases. If thereafter the security be found to be insufficient, new security may be required within a given time; in default of the entry of which, the cause may proceed with the same effect as if none had been given, the sureties, however, remaining liable. By agreement of the parties, or upon approval by the court, after notice, new security may be entered in lieu of that originally taken, and an exoneratur entered on the first bond; or the security given may be limited to a particular property, if clear of encumbrances, and if also the security be entered as a lien upon said property.

Sec. 38, Act of June 4, 1901, P. L. 364.

1718. In cases where there is a use-plaintiff, if the claim shall be paid, or otherwise satisfied or discharged, at any time before or after filing, it shall be the duty of the use-plaintiff or his legal representatives, at the request of the owner or of any other person interested, by a statement in writing showing how the claim was paid, satisfied or discharged, and on the payment of costs if any be due, to enter satisfaction on the record of such claim. In such cases, a refusal to satisfy the claim for a period of sixty days after notice so to do, served upon the use-plaintiff or his agent or attorney, shall subject such use-plaintiff to a suit, as for penalty, at the hands of the party aggrieved, in such sum as the jury shall determine to be just, but not exceeding the amount of the claim.

Sec. 39, Act of June 4, 1901, P. L. 364.

1719. From any definite judgment, order or decree, entered by the court of common pleas under any of the provisions of this act, or from the refusal to open a judgment entered by default, an appeal

may be taken by the party aggrieved to the Supreme or Superior Court, as in other cases.

Sec. 40, Act of June 4, 1901, P. L. 364.

An order simply dismissing a motion for judgment on the whole record, and not entering judgment for the plaintiff, is interlocutory and no appeal lies from it: *Philadelphia to use v. Pemberton*, 206 Pa. 73.

1720. This act shall apply only to claims wherein the right to file a lien accrues after the date of its approval; but the rights of other claimants, under existing laws, shall remain unaffected by its passage, and all claims properly filed thereunder are hereby validated. And this act shall not apply to taxes assessed upon unseated land.

Sec. 41, Act of June 4, 1901, P. L. 364, as amended by Sec. 1, Act of March 26, 1903, P. L. 63.

The Act of June 4, 1901, P. L. 364, is not retroactive in effect, and does not repeal the Act of May 16, 1891, P. L. 69, as to municipal claims which accrued before the approval of the Act of 1901: *Scranton City v. Stokes*, Nos. 1 and 2, 28 Super. Ct. 434-437; *Phila. v. Mason*, 37 Super. Ct. 478; *Tiegel v. Lore*, 61 Super. Ct. 149 affirming 62 P. L. J. 532.

The Act of June 4, 1901, P. L. 364 has no application to a case where an ordinance was adopted and most of the work done prior to the passage of the Act of 1901, but not entirely completed until about a month thereafter: *Tarentum Borough v. Moorhead*, 26 Super. Ct. 273.

While the Act of June 4, 1901, P. L. 364 repeals certain acts, it does not repeal them, nor the procedure provided by them, in so far as they concern the collection of municipal claims, the right to collect which had accrued prior to June 4, 1901: *Tiegel v. Lore*, 61 Super. Ct. 149. But see section 1689.

(c) Method of Establishing Title to Land Acquired at Sales on Municipal Claims.

1721. In all cases where land has been heretofore sold by the sheriff on claims for unpaid taxes or municipal liens, under any act or acts of Assembly, the purchaser, including a municipality in case it be the purchaser, at such sale, or his or its successor in title, may present his or its petition, under oath, to the court of common pleas of the county wherein the land is situate, setting forth: (a) The location of the lands by metes and bounds, or, if it be in a recorded plan of lots, the plan number of the lot and the place of record of the plan; (b) the names of the former owners, reputed owners, persons in possession, or any other person having or claiming to have a right to, interest in, or claim against, said land, if any there be; and (c) that upon diligent inquiry no person has been found who has or claims to have any right, title, or interest in, or claim against, said land, unless it be those named in the petition. Thereupon a rule shall be granted upon the persons named

in the petition, and generally upon all other persons not named in the petition, who have or claim to have any right, title, or interest in, or claim against, the said land, to appear within sixty days from service of the rule, and show cause why the title of the petitioner to said land should not be adjudicated, and decreed valid and indefeasible as against all rights and claims whatsoever. The rule may be made returnable to such term or return day as may be fixed by the court, and shall be entered of record in the appearance docket of said court, and duly indexed therein and also in the ejectment index of said court. As to persons domiciled within the county, the rule shall be served and returned as writs of summons are served and returned. As to those persons who do not have their domicile within the county in which the rule is issued, or those whose domicile is outside the State, the rule may be served by mailing a true and attested copy of the petition and rule by registered letter to his or their last known address, if any.

In addition thereto, the court shall direct that notice by one advertisement in a newspaper of general circulation in the county where the land is situate be given to all persons, including those named in the petition, to appear on or before the return day of the rule, and show cause why the title of the petitioner should not be adjudicated, and decreed valid and indefeasible as against all rights or claims whatsoever. The advertisement shall be made at least sixty days before the return day of the said rule.

Sec. 1, Act of May 16, 1919, P. L. 180.

See also the Act of June 4, 1915, P. L. 842, on the same subject.

1722. In case no person or persons shall appear within the time hereinbefore stipulated, or in case he shall appear and does not make answer to said rule within fifteen days after appearance, the court shall make the rule absolute as to all persons who do not appear or answer, as the case may be. Thereafter all rights and claims of those against whom the rule is made absolute with respect to said land, shall be totally barred; and any deficiency or defects whatever in the procedure, whereby the land was acquired at sheriff's sale, as aforesaid, from the filing of the claim up to and including the actual sale and delivery of sheriff's deed, shall not thereafter be asserted, and the title of the petitioner shall be adjudicated, and decreed valid and indefeasible as against all such persons. If any person or persons shall appear and make answer to said petition, the court shall thereupon order and decree that such person or persons shall begin proceedings to establish his or their title or interest in, or claim against, said land within ninety days thereafter, and if such person or persons shall fail to comply

with said order or decree, the court shall thereupon make the rule absolute with the same force and effect as hereinbefore stated.

Sec. 2, Act of May 16, 1919, P. L. 180.

1723. The court may make such other or further orders or decrees in the premises as it may deem necessary or proper.

Sec. 3, Act of May 16, 1919, P. L. 180.

1724. The remedy herein provided is not intended as an exclusive method of establishing title to land acquired at a sheriff's sale on a tax claim or municipal claim.

Sec. 4, Act of May 16, 1919, P. L. 180.

1725. The provisions of this act shall not affect the right of redemption as now provided by law.

Sec. 5, Act of May 16, 1919, P. L. 180.

CHAPTER XXXIII.

ROADS, HIGHWAYS AND BRIDGES.

- (a) Proceedings by Viewers to Lay Out, Open, Widen, Straighten, and Vacate and to Fix the Site of Public Roads and Bridges.

Reviewers and Re-Reviewers.

For provisions relating to the laying out and opening, of roads and streets in first class townships, see sections 495-512.

The proceedings provided by the acts contained in this subdivision apply only to townships of the second class, and to the laying out of roads which be partly in a township of the first class and partly in some other municipal subdivision. See section 640.

1726. The court of quarter sessions of every county of the Commonwealth, on being petitioned to grant a view for a road within the respective county, shall have power and are hereby required, in open court, to appoint, as often as may be needful, three persons, qualified as hereinafter is provided, to view the ground proposed for such road, and make report of their proceedings to the respective court at the next term thereof: Provided, That the provisions of this act, relative to the appointment of viewers to lay out roads and to assess damages, shall not extend to the city and county of Philadelphia, hereinafter specially provided for.

Sec. 1, Act of June 13, 1836, P. L. 551, as amended by Sec. 1, Act of April 27, 1911, P. L. 95.

The viewers appointed under the provisions of this section are appointed from the board of county viewers under section 5 of the Act of June 23, 1911, P. L. 1123, which provides "whenever hereafter a petition shall be presented to any court judge or judges of this Commonwealth praying for the appointment of viewers, re-viewers or re-reviewers, or a jury of view, or of a road jury or of commissioners of view or of any person or body, under any distinction for the purpose of viewing, laying out, opening, grading, altering, widening, vacating and construction of roads, etc.***the court shall appoint a board of view of three members, one of whom shall be learned in the law from among the board of viewers of the county as such viewers, etc."

The jurisdiction of the court, under this section, of proceedings to lay out a public road between two townships of the first class has not been taken away by the Act of April 28, 1899, P. L. 104, creating first class townships nor by the Act of June 7, 1901, P. L. 510, empowering township commissioners to lay out roads and streets within a township: *In re Road in Scott and Union Townships and Green Tree Boro.*, 17 D. R. 791.

It is error to award a view returnable to any more distant term than the next term. *Frankstown Township Road*, 26 Pa. 472; but see *Umbria Street*, 32 Super. Ct. 333 and *Road in Bushkill Township*, 12 Northampton 118, which hold that the requirement in the third section, Act of June 13,

1836, P. L. 551, that report shall be made to the next term of court, is repealed by the Act of Mar. 18, 1903, P. L. 28, which empowers the court to fix the time for making the report: Query, does the Act of Mar. 18, 1903, include juries of view to lay out roads?

In road proceedings the question of necessity and the question whether the road will be too much of a burden on the township are exclusively for the viewers. Depositions and supplemental petitions bearing on these questions will not be considered by the court: *Lower Saucon Township Road*, 6 *North. C. R.* 221.

The court of quarter sessions has jurisdiction under this Act to lay out a public road located partly within a borough and partly within a township: *Road between Pricerville and Scott Township*, 1 *Lack. J.* 171.

Supervisors of a township have no authority to relocate a road in order to place it on what might be supposed its recorded site. The authority under an order to open is exhausted by the action of those to whom it is directed. A road once laid out cannot be altered except by a new and original proceeding. Neither have the supervisors authority on the grounds of sudden necessity, to open a route for the public through private property, till a road can be regularly laid out: *Holden v. Cole, et al.*, 1 *Pa.* 303; *Van Buskirk et al., v. Dawley*, 91 *Pa.* 423.

It is improper to join together in one proceeding, before the same viewers, two or more separate roads: *Sadsbury Township Roads*.—*Toland's Appeal*, 147 *Pa.* 471.

It is error for the court in its order to the viewers to designate any intermediate point in the route of a proposed road, the route between the termini is exclusively for the viewers: *Sadsbury Township Roads*—*Toland's Appeal*, 147 *Pa.* 471.

1727. Roads upon and along a line which divides two adjoining counties, may be laid out, altered and vacated in the manner provided in the case of other roads, except that the court of quarter sessions of each of the said counties shall appoint three of the viewers, and that a report as aforesaid, shall be made to the said courts respectively, and that the said courts shall otherwise have and exercise concurrent jurisdiction therein.

Sec. 26, Act of June 13, 1836, P. L. 551.

The viewers appointed under this section are appointed from the board of viewers under section 5 of the Act of June 23, 1911, P. L. 1123; see note under section 1726.

A road laid out under the provisions of this section must be laid out on the boundary line, one half of the breadth of the road in each county.

Where the boundary line is a creek a road cannot be laid out, under the provisions of this act, at some places in one county,—at others in another county.

A road so laid out cannot be vacated in one county by a review: *Roaring Creek Road*, 11 *Pa.* 356.

This section refers only to roads laid along a line which divides two adjoining counties and has no application to a road in one county connecting at the county line with a road in another county: *Big Run Road*, 47 *Super. Ct.* 166.

1728. In all cases wherein any proceedings are about to be had before any county commissioners or courts of this Commonwealth, by petition to the said courts or commissioners, looking to the laying out, opening and construction of new roads for public use, it shall be the duty of the parties making application to the commissioners or to the courts for the appointment of viewers, reviewers or re-reviewers to lay out, open or construct such public road, to give written notice of such application to the supervisors or commissioners of roads and highways of the territory through which the proposed public road is designed to be laid out and constructed, of the time and place of such application, and of the time and place of the meeting of viewers, reviewers, or re-reviewers, and a copy of said written notice, properly attested, shall be filed among the records of the court having cognizance of the matter; and a failure to comply with the provisions of this act, as to such notice, shall be sufficient grounds for an application to set aside whatever proceedings may have been taken, of which said supervisors or commissioners of roads, and highways had no written notice.

Sec. 1, Act of May 2, 1899, P. L. 176, as amended by Sec. 1, Act of Mar. 29, 1905, P. L. 69.

Although notice to landowners and parties interested of the time fixed for views has been deemed essential, the presumption is that the requirements have been complied with and it is not necessary to specially state in the report that such notice has been given: *Road in South Abington Twp.*, 109 Pa. 118.

The supreme court does not, on certiorari, review the facts and cannot therefore determine in a road case that there was any want of proper notice of the time of holding the views: *Spring Garden Road*, 43 Pa. 144.

The Act of May 2, 1899, P. L. 176, does not repeal the special road law of March 13, 1869, P. L. 368, applicable to *Franklin County*: *Road in Green and Guilford Townships*, 21 Super. Ct. 418.

Where the proceedings show that the township commissioners accepted notice of the petition and the report of viewers sets forth that 10 days' notice was given them of the time and place of view and that a majority of the commissioners were present at the view and concurred in laying out the road, a landowner, in the absence of any action by the commissioners, has no standing to raise the objection that the provisions of the above act were not literally complied with: *Cornplanter Township Road (No. 1)*, 26 Super. Ct. 20.

It is unnecessary under this section to give notice of the opening and construction of a new road to borough officers: *Cornplanter Township Road (No. 2)*, 26 Super. Ct. 29.

This act relates to the method of procedure only and does not affect vested rights. The failure to file a copy of the written notice required is not sufficient to set aside the proceedings where the supervisors in fact were properly notified: *Towamencin Road*, 23 Pa. C. C. 113.

The notice required by this act must be given to the supervisors of the township or townships affected by the road to be laid out, changed or vacated and copy of such notice properly attached must be filed among the records

of the court having cognizance and a failure to do so will be sufficient grounds for an application to set aside the proceedings: *Road in Curtin and Boggs Townships*, 23 Pa. C. C. 328.

Failure to give the written notice required by this act will prove defective to the proceedings, unless the supervisors waive the same, and such notice can only be waived by their formal action as a body constituting the road supervisors of the township: *Clarion Township and Clarion Borough Road*, 35 Pa. C. C. 17; *Mifflin Township Road*, 68 Super. Ct. 281.

Under this act written notice of an application for the appointment of reviewers must be given to the supervisors, of the time and place for the hearing of such application, at the time the petition is filed, although exceptions to the report of the original viewers have not been disposed of. The fact that the petition is presented by the county commissioners does not obviate the requirement as to notice: *Franklin Township Road*, 40 Pa. C. C. 484.

Proceedings to lay out and open a public road may be set aside where no written notice of such proceedings has been given to the township supervisors or commissioners, but an application to set aside proceedings based on failure to serve such notice must be made to the court of original jurisdiction and the appellate court will not reverse proceedings where the objection on this ground was not filed in the lower court: *Hampton Township Road*, 72 Super. Ct. 484.

The notice required to be served upon the township supervisors or commissioners by this act is not required where the proceeding is to vacate or change the location of an existing road: *Public Road in Potter and Tioga Counties*, 10 D. R. 456; *Road in Salem Township*, 23 D. R. 140; *In Re Washington Road*, 72 Super. Ct. 461; *Road in Salem Township*, 23 D. R. 140.

Failure to give the written notice of the time and place of holding views, reviews, etc., to the supervisors and to file a copy of such notice among the records of the court having cognizance of the matter, will vitiate the proceedings: *Frankford Township Road*, 11 D. R. 78; *Road in Windsor Township*, 14 D. R. 415.

A report of a jury of view will be set aside where all the township supervisors have not received notice of the proceedings as required by this act: *Road in Shrewsburg Township*, 14 D. R. 468; *In matter of Petition for Public Road in Township of Crescent and Moon*, 64 P. L. J. 652.

Where five of the township commissioners signed the petition for the opening of a public road, verbal notice of the view was given to five members of the Board and notices mailed to the other members and where the Board by its official acts subsequent to the filing of the report of the viewers, declared the road opened, placed it on record and advertised for bids, the court will, after six months refuse to quash the proceedings for the opening of the road based on the grounds that the notices required by this act were not served upon the Commissioners: *Mifflin Township petition*, 65 P. L. J. 36.

A report of viewers will be set aside where it does not appear by a properly attested copy filed of record, that notice in writing was given "by the parties making application" for the road to the supervisors of the township affected, (1) of the time and place of the application for the appointment of viewers, and (2) of the time and place of their meeting: *In re road in Wright Township*, 14 Luz. 23; *Upper Saucon Township Road*, 3 Leh. 477; *Road in Fulton Township*, 26 Lanc. L. R. 397; *Road in*

Crescent Township, 30 York 130; Public Road in Chartiers Township, 77 P. L. J. 268.

1729. In any proceedings now pending or that may hereafter be brought in any court of quarter sessions, for the laying out, opening, changing, vacating, widening, or altering of a road any part of which lies within a township of the first class, such road shall not be laid out, opened, changed, vacated, widened, or altered unless and until the board of commissioners of such township shall have passed a resolution consenting and approving thereto, and shall have filed with the clerk of said court a copy of such resolution duly certified by the township secretary.

Act of May 16, 1921, P. L. 635.

Under the provisions of the Township Code, roads in first class townships are laid out by the township commissioners. See *supra* section 405 of the Code. The laying out of roads referred to in this act evidently refers to roads which lie partly in a first class township. Such roads are laid out by the court of quarter sessions under the provisions of section 640 of the Township Code.

1730. Any discreet and reputable citizen, qualified to vote for members of the legislature, may be appointed a viewer for any of the purposes mentioned in this act; but except it be otherwise especially provided, the court appointing viewers shall select them, as far as practicable, from persons residing near the place to be viewed.

Sec. 51, Act of June 13, 1836, P. L. 551.

Sec. 1, of the Act of June 23, 1911, P. L. 1123, fixes the qualifications of the members the county board of viewers from which road viewers are now appointed.

A road juror is not disqualified by reason of his residence in a township through which a proposed road if confirmed will be opened, although many petitioners for the road also reside in the same township: *Road in Bloomsburg and Scott Townships, 11 D. R. 93.*

1731. In all cases of a view or review, or of any view subsequent to a review of a road, a surveyor shall be found and paid by the persons applying for such views.

Sec. 58, Act of June 13, 1836, P. L. 551.

The surveyor appointed under the Act of May 8, 1889, P. L. 129, as a viewer does not supply the place of the surveyor who is to be furnished by the petitioners under this section: *Widening of East Avenue in the Borough of Jenkintown, 7 Lanc. L. R. 164.*

Where a person is employed as surveyor to a board of viewers or reviewers he is to be paid in the same manner as viewers to wit, by the county if the road is public, or by the petitioners if it is a private road: *Ackerly et al., v. The county of Lackawanna, 1 Lack. L. N. 14.*

1732. In all proceedings to lay out or vacate a public or private road, or to assess damages as provided by law, to fix the site of a county bridge, and to accept the same when repaired or completed according to existing laws, the viewers, reviewers, et cetera, shall

consist of three fair, judicious and impartial persons, one of whom shall be a surveyor to be appointed as now provided by law. This act shall not apply to counties having local acts inconsistent herewith.

Act of May 8, 1889, P. L. 129, supplementing Sec. 52, Act of June 13, 1836, P. L. 551.

This act does not violate Sec. 7, Article III, of the constitution: *Road in Cheltenham Township, 140 Pa. 136, widening of East Avenue in the Borough of Jenkintown, 6 Montg. 45, s. c. 7 Lane. L. R. 164.*

This act did not repeal Sec. 3, Act of Feb. 24, 1845, P. L. 52: *Greenwood Township Road, 27 Super. Ct. 549.*

This act does not furnish a rule of procedure for assessing the damages etc. for widening a road or street, but is limited by its terms to laying out and vacating the same: *Chestnut Street, 8 Pa. C. C. 55, s. c. 20 Phila. 364; Palmer Township, 16 D. R. 10, s. c. 10 North. C. R. 181; Widening of East Avenue in the Borough of Jenkintown, 6 Montg. 45, s. c. 7 Lane. L. R. 164; Lower Saucon Township Road, 6 North. C. R. 221.*

This act should be adopted in practice to the general road law of 1836 and the general act of 1874 in counties having no local laws, and in counties having local laws but not inconsistent therewith; and while all viewers must convene, a majority may decide.

It has reference to such bridges as are wholly within the territorial limits of the several counties; the act of 1836, Sec. 46 is still in force as to bridges over creeks on the line of adjoining counties: *Road and Bridge Viewers, 8 Pa. C. C. 557.*

An objection that none of the viewers was a surveyor, as required by this act, is too late when made after the view: *Millcreek Road, 9 Pa. C. C. 592, s. c. 8 Lane. L. R. 304.*

The surveyor appointed under this act as a viewer does not supply the place of the surveyor who is to be furnished by the petitioners under section 58 of the general road law of June 13, 1836: *Widening of East Avenue in the Borough of Jenkintown, 6 Montg. 45, s. c. 7 Lane. L. R. 164.*

There is no inconsistency between this act and the local act of April 22, 1858, P. L. 464: *Forks Township Road, 2 North. C. R. 135.*

1733. When any petition is presented to any court of quarter sessions of this Commonwealth praying for the appointment of viewers, as now provided by law, to view and lay out a public road in any township or townships of this Commonwealth, such petition, and the report of the viewers thereon, shall not be held invalid for the reason that one of the termini named in the petition or in the report is at a point other than in a public highway or place of public resort, where it appears in such petition or report that the other terminus is in a public road and that the road is one necessary for public travel: Provided, however, That in case one of the termini named in the report is at a point other than in a public highway or place of public resort the finding of the viewers that the road is necessary for public travel shall be subject to the approval of the court of quarter sessions, which may confirm or set aside said finding.

Sec. 1, Act of June 20, 1919, P. L. 509.

1734. All viewers and reviewers appointed for any purpose mentioned in this act, also all persons appointed to inspect any bridge as aforesaid, shall, before they proceed to the duties of their appointment respectively, make oath or affirmation to perform the same impartially, and according to the best of their judgment; which oath or affirmation may be administered to them by any magistrate of the respective county, or by any one of their number.

Sec. 53, Act of June 13, 1836, P. L. 551.

This section would seem to apply also to viewers and reviewers appointed only to assess damages.

Under the Act of June 23, 1911, P. L. 1123, the official viewers are sworn upon entering upon the duties of their office and are not required to be sworn prior to any particular view: *Franklin Township Road*, 40 Pa. C. C. 484.

The form of oath prescribed by this section must be strictly followed. A report by viewers who were not properly sworn or any one of whom was not qualified until after the view of the premises, cannot be cured by amendment: *Cambria Street*, 75 Pa. 357; *Road in Bushkill Township*, 12 North. C. R. 118; *Road in Foster Township*, 9 Luz. L. R. 114; *South Shenango Township Road*, 25 Pa. C. C. 587; *Allen Township Road*, 19 D. R. 356, s. c. 12 North. C. R. 152, 23 York 160, *Road in Kidder Township*, 9 Luz. L. R. 10.

A justice of the peace cannot swear himself as a road viewer: *East Penn Township Road*, 22 Pa. C. C. 453.

A notary public is competent to administer the oath to road viewers: *Road in Lower Merion Township*, 22 Pa. C. C. 645.

If the report shows that the viewers were "duly sworn" and there are no exceptions to the form of the oath, it will be presumed that the oath was in the form required by the statute: *Road in Nescopeck Township*, 2 York 20; *Road in Lower Merion Township*, 58 Pa. 66.

Report of viewers should show when and where they met and that they viewed the ground, but an omission of this is not fatal. The report and draft should show the improvements, but an omission can be supplied by amendment: *Road in Kidder Township*, 9 Luz. L. R. 10. The oath must be taken before the view: *Road in Foster Township*, 9 Luz. L. R. 293.

1735. The persons appointed as aforesaid shall view such ground, and if they shall agree that there is occasion for a road, they shall proceed to lay out the same, having respect to the shortest distance, and the best ground for a road, and in such manner as shall do the least injury to private property, and also be, as far as practicable, agreeable to the desire of the petitioners.

Sec. 2, Act of June 13, 1836, P. L. 551.

The termini of a projected road are its designation and only means of identification. Reviewers are not restricted to the adoption or rejection of the former report, they may substitute a new route for a part rejected but must preserve the beginning and ending substantially: *Road in Lower Merion*, 58 Pa. 66; *Road in South Abington Township*, 109 Pa. 118; *Derry Township Road*, 11 Super. Ct. 232; *Road in Bushkill Township*, 12 North. C. R. 118.

It is fatal to designate intermediate points in the petition or order for the view of a road. The court has no power to alter one of the termini: *Catharine Township Road*, 76 Pa. 189; *Sadsbury Township Road*, 147 Pa. 471; *Franklin Township Road*, 54 Super. Ct. 293; *Ottercreek Township Road*, 104 Pa. 261; *Ransom Township Road*, 15 Luck. J. 109.

When the want of a road from one given point to another would prevent a portion of the public from getting to market, to church, or to other places where men are in the habit of meeting on their lawful business, or in pursuance of their proper duties, the road is necessary. It is not necessary in any case for a road to start from or terminate at another at right angles in order to insure the shortest distance: *West Pikeland Road*, 63 Pa. 471; *Schuylkill River Road*, 19 Super. Ct. 376; *Road in Lower Merion Township*, 22 Pa. C. C. 645; *Road in Hanover Township*, 14 D. R. 778.

The function of viewers under this act was in the first instance to determine whether there was a public necessity for the proposed road, the duty of laying it out and endeavoring to obtain releases of damages arising only in case they found that necessity to exist: *Road in Albany Township*, 2 Berks 98.

Report of viewers need not show affirmatively that the required notice of the view was given, if the fact appears by the record of the proceedings: *Road in Albany Township*, 2 Berks 98.

1736. Hereafter it shall not be lawful to open any street, lane, alley or public road through any burial ground or cemetery within this Commonwealth, any laws heretofore passed to the contrary notwithstanding: Provided, That this section shall not extend to the city and county of Philadelphia.

Sec. 1. Act of April 5, 1849, P. L. 397.

Repealed as to townships of the first class by Act of July 14, 1917, P. L. 962.

For similar provisions as to townships of first class, see section 496.

This act does not apply to land until it is in fact a cemetery or graveyard. *U. B. Congregation v. Emaus Borough*, 56 Super. Ct. 136.

A portion of a cemetery in which no bodies are buried may be taken in widening a public street: *Mellon v. Borough of Springdale*, 60 P. L. J. 485, s. c. 4 M. L. 33.

The purchase of land by a cemetery company on both sides of an alley does not give the cemetery company the right to close the alley: *DuBois Cemetery Co. v. Griffin*, 165 Pa. 81.

This act was held not to be repealed or suspended by a subsequent law extending the boundaries of a borough and appointing three commissioners who shall have authority "to survey and lay out and mark the lines of such streets, roads, lanes, and alleys, as they shall deem necessary within the said limits." *Egypt Street*, 2 Grant. 454.

1737. No view which may be had for any of the purposes aforesaid, shall be good and valid, unless five of the persons appointed for the purpose shall view the place in question, nor unless four of the actual viewers concur in the report.

Sec. 52. Act of June 13, 1836, P. L. 551.

This section is repealed in effect by Sec. 9, Act of June 23, 1911, P. L. 1123, which provides as follows: "**** Every report must be concurred in and signed by at least two of the viewers, and no report shall be made unless

so concurred in and signed, save a report of inability to reach conclusions
 ***at least two of the three viewers appointed for the purpose shall view
 the premises in question."

1738. It shall be the duty of all persons appointed in the several counties of this Commonwealth to view and review any public or private road or bridge, if they shall decide in favor of locating said road or bridge, to endeavor to procure from the persons over whose land such location may be made releases from all claims for damages that might arise from the opening of such road or the building of such bridge; and in every case where said viewers shall fail to procure such releases, and shall appear to them that any damages will be sustained, it shall be their duty to assess the damages and make report thereof, signed by a majority of their number, and return the same, together with all releases obtained, to the court of quarter sessions, and the damages so assessed shall be conclusive, or may be subject to appeal, review or modification, as may be provided by existing laws in the different counties of this Commonwealth.

Sec. 1, Act of May 14, 1874, P. L. 164.

It is not necessary that the report of viewers should state that they have endeavored to obtain releases. It will be presumed that the viewers performed their duty and that all things were rightly done unless the contrary is shown: *Road in South Abington Township, 109 Pa. 118.*

Viewers have no authority under this act to direct how, when, or by whom the damages should be paid: *Road in O'Hara Township, 87 Pa. 356.*

This act applies to a case where the proceeding is to widen an already opened public road: *Widening Merion Avenue, 4 Del. 452, s. c. 7 Montg. 102.*

It is not necessary that the viewers state in their report that they have endeavored to obtain releases, nor in the assessment of damages that they have taken into consideration the advantages accruing to the landowner from the opening of the road: *Road in South Abington Township, 109 Pa. 118*; but see, *Road in Rush Township, 10 D. R. 650*; *North Union Township Road, 150 Pa. 512*; *Appeal of Central R. R. of New Jersey, 102 Pa. 38*; *Road in York Township 11 D. R. 706*; *Road in Cogan House Township, 7 W. N. C. 257, s. c. 8 Luz. 211.*

The assessment of damages by the jury of view is conclusive unless an appeal, review or modification thereof is provided for by the laws existing in the particular county at the time. In the absence of a local or special act conferring the power, it is error to appoint a jury of view or review for the ascertainment of damages alone: *Road in Warriorsmark Township, 126 Pa. 305*; ment of damages alone: *Road in Warriorsmark Township, 126 Pa. 305*; *Kohler v. Butler Co. Appellant, 31 Super. Ct. 305*; *West Whiteland Road, 4 Pa. C. C. 511, s. c. 4 Montg. 11*; *Hopewell Township, 12 Pa. C. C. 517*; *Bridge in East Nantmeal, 21 Chester 391.*

If the original petition for a road view is in proper form, the fact that the report of the viewers did not comply with the requisities of the law is sufficient reason for setting aside the order confirming the report but another view may be had upon the same petition: *North Union Township Road, 150 Pa. 512.*

By the silence of this act as to who shall pay such damages as are assessed, the liability remains where it was prior to this act, that is, upon the county: The Act of May 28, 1913, P. L. 368 does not repeal this: *Road in Fulton Township*, 23 D. R. 678.

This act is not applicable to a street already located and established according to law; and when viewers are appointed to report on the necessity for opening such a street their report is to be confined to that subject, and they are without power to assess damages under said act: *Brooklyn Street*, 118 Pa. 640; *Magnolia Ave.*, 117 Pa. 56; *Jackson Street*, 83 Pa. 328; *Fifty-Second Street*, 11 Phila. 437, but see *Pearl Street*, 111 Pa. 565, s. c. 15 W. N. C. 205; *Twenty-Eight Street*, 102 Pa. 140; *Arvott Street*, 18 W. N. C. 121.

1739. The viewers as aforesaid shall make report, at the next term of the said court, and in the said report shall state particularly: first, who of them were present at the view; second, whether they were severally sworn or affirmed; third, whether the road desired be necessary for a public or private road; they shall also annex and return to the court a plot or draft thereof; stating courses and distances, and noting briefly the improvements, through which it may pass: and whenever practicable, the viewers shall lay out the said roads at an elevation not exceeding five degrees, except at the crossing of ravines and streams where by moderate filling and bridging, the declination of the road may be preserved within that limit.

Sec. 5, Act of June 13, 1836, P. L. 551.

This section is supplemented by Sec. 9 of the Act of June 23, 1911, P. L. 1123, which provides that "It shall be the duty of the board of view appointed in each case to prepare and file in the proper court, a report which shall set forth, in brief and concise paragraphic forms, all findings of fact and conclusion of law, a statement of the amount of damages or benefits assessed, and attach to the said report a plan showing the properties affected."

Under the Act of June 23, 1911, P. L. 1123, (Sec. 3) the official viewers are sworn upon entering upon the duties of their office and are not required to be sworn prior to any particular view: *Franklin Township Road*, 40 Pa. C. C. 484.

The requirement that the viewers shall make report at the next term is repealed by the Act of March 18, 1903, P. L. 28: *Umbria Street*, 32 Super. Ct. 333; *Road in Bushkill Township*, 12 Northampton 118; Query: Does the Act of March 18, 1903, contemplate juries of view to lay out roads?

Road viewers must return to the next term after they are appointed, to allow time for filing exceptions to the report if necessary: *Boyer's Road*, 37 Pa. 257, *Heidelberg Township Road*, 47 Pa. 536. (Decided prior to the passage of the Act of March 18, 1903, P. L. 28).

"At the next term" as used in this section, means, in the absence of a restraining rule of court, during the regular term: *Mifflin Township Road*, 16 Pa. C. C. 74.

A report of viewers presented to court and confirmed on September 2, when the time for the holding of court at the term to which it was returnable expired in August 27, and the next term began September 5, is too late: *Upper Mahanoy Township Road*, 12 Pa. C. C. 618.

Reports of juries of view must be made at the next term: *In re Opening of Knox Street*, 12 Super. Ct. 534. (Decided prior to the passage of the Act of March 18, 1903, P. L. 28).

An order to viewers will not be continued when the jury have acted thereon after the return day, to enable them to report the result of such irregular action on their part. The court will, in such case, appoint another jury in the original petition and issue an alias order of review: *Alley in West Chester, 1 Pa. C. C. 649.*

An order of court extending the time for the return of viewers is invalid when made after the end of the term at which it should have been filed even though made at an adjourned session, with the same effect as though the order was filed on the first day of the last term: *In re Road in Salem Township, 103 Pa. 250.*

The report of viewers must be made at the next term of court after their appointment. If for any sufficient reason the report cannot be made at the next term, the proper course is to continue the order to view and to make it returnable to the next succeeding term; but this must be done before the order has expired: *Upsal Street, 22 Super. Ct. 150; Sewickley Township Road, 26 Super. Ct. 572; Frankstown Township Road, 26 Pa. 472; Heidelberg Township Road, 47 Pa. 536.* (These cases arose prior to the Act of Mar. 18, 1903, P. L. 28).

After a proceeding for opening a road has been conducted in accordance with the general road law, terminating in the absolute confirmation of the report of viewers, the court has no discretionary power to set aside the confirmation: *Road in Muhlenburg Township, 4 Berks 176.*

When in fact there are no improvements on the land penetrated by the road, it is not necessary that the report or draft attached to the report should expressly negative their existence: *Vacation of Road in Beaver Township, 28 D. R. 989.*

While the report of viewers should set forth the improvements on the land over which the road passes the road will not be set aside for noncompliance with this rule where the draft shows the residences of at least two of the adjoiners of the proposed road plainly set out which would indicate that the land was improved, and no proof is produced of the existence of any other improvements: *Road in Mount Joy Township, 25 Pa. C. C. 111.*

The plot or draft required by this section to be attached to the report of the viewers is sufficient though made by some one not a viewer, if adopted and affirmed by them: *In re Road in Strasburg Township, 15 D. R. 666.*

Where a report states that a plot or draft of the road is returned "showing courses and distances, and noticing briefly the improvements over which it passes," but in fact no improvements whatever are noted either in the report or in the plot the proceedings will be set aside: *O'Hara Township Road, 152 Pa. 319.*

The draft required to be annexed and returned to the court by this section need not be attached by the viewers but may be appended by any person whom the viewers authorize to do so: *New Hanover Road, 18 Pa. 220.*

When the report of viewers does not mention improvements along the line of the road, the presumption is that there are none, but if the presumption is repelled by other facts, such as the assessment of damages, the report must mention the improvements and the failure to do so is fatal to the proceedings: *In re Road in the Borough of Bellevernon, 15 W. N. C. 232; Lect Township Road, 159 Pa. 159.*

The provisions of this section requiring viewers to note briefly the improvements through which the road may pass are not complied with by merely writing the words "improved lands" at various places on the draft attached

to the report. When a report is defective because it fails to note improvements, the defect cannot be taken advantage of after confirmation ad in the appellate court where no exceptions were taken thereto in the court below: *Road in Upper Derby Township, 15 Super. Ct. 652.*

It is essential that either the report or the draft show the improvements along the line of the proposed road, and an omission to do so is fatal. Such omission however is amendable and the report can be referred back to the viewers for amendment: *Road in Dover Township, 12 York 20.*

The draft required by this section is an essential part of the report and is to be considered as a part thereof in passing upon the designation of the Termini: *Roche's Private Road, 10 Super. Ct. 87; O'Hara Township Road, 152 Pa. 319; Road in South Abington Township, 169 Pa. 118.*

Where re-reviewers report and recommend "the same road, with its courses and distances as reported by the viewers in their case" the omission to attach a copy of the plan returned by the viewers, to their report, is not a fatal defect: *Stowe Township Road, 20 Super. Ct. 404.*

Where the report of viewers states that "they were severally sworn in the form and manner prescribed by the said order (appointing them) and according to law" it will be presumed that they were sworn in the form required by the Act of Assembly: *Road in South Abington Township, 169 Pa. 118.*

Where it appears from the face of the record that the viewers were "duly sworn" and no one of the exceptions filed refers to a defect in the form of the oath, it will be presumed that the oath was in the form prescribed by the statute: *Road in Nescopeck Township, 2 York 20.*

A report of viewers will be confirmed, although one of the viewers did not actually subscribe his name to the oath, if the report states that all the viewers were sworn: *Vacation of Public Road in Bearer Township, 28 D. R. 989.*

The presumption is that the viewers were qualified for appointment, although the order is silent on the subject and on appeal no one can be heard to allege the contrary: *Derry Township Road, 11 Super. Ct. 232.*

It is error for the court to confirm a report of viewers made in pursuance of an order abandoned or not followed up as the statute prescribes: *Frankstown Township Road, 26 Pa. 472.*

Clerical errors in a report of viewers appointed to lay out a public road should be referred by the court to the viewers before confirmation: *Boyer's Road, 37 Pa. 257.*

1740. Viewers, or juries of view, appointed by any court of this Commonwealth to assess the damages and benefits, due to the taking, injury or destruction of private property, in and by the construction or enlargement of any public work, highway or improvement, shall make their reports within a time which said court shall fix when so appointing them: Provided, That if any of the viewers, or juries of view, so appointed, shall for any good and sufficient reason appearing to the court, be unable to file its report within the period so fixed, the said court may, in its discretion, either before or after the expiration of the time fixed, extend the time for the filing of such report to such a time as justice and the circumstances of the case may demand.

Act of March 18, 1903, P. L. 28.

It is only where the viewers are unable to report from any good and sufficient reason that the court may, in its discretion, either before or after the expiration of the time fixed, extend the time for filing the report. The neglect or oversight of counsel in failing to file the report is not such a reason as is contemplated by the act: *Public Road in Townships of Crescent and Moon*, 64 P. L. J. 652, s. c. 30 York 130.

A proper case for the exercise of the court's discretion is made out where it appears that the non-performance of the reviewers' duties was owing to uncontrollable circumstances, that the omission sooner to ask for an extension of time was due to counsel's illness, and that a refusal to afford an opportunity for review would necessarily debar the petitioners from being heard at all in court in opposition to the road: *Tulphocken Township Road*, 21 D. R. 158, s. c. 3 Berks 387.

The power of the courts to extend an order of view is expressly confirmed by this act: *Beach Creek Township Road*, 34 Pa. C. C. 570, s. c. 17 D. R. 581; *Road in Cumru Township*, 5 Berks, 281.

This act does not violate Art. III, Sec. 21, of the State constitution, and it distinctly repeals that portion of the third section of the Act of June 13, 1836, P. L. 551, which requires the viewers to make report at the next term: *Umbria Street*, 32 Super. Ct. 333. (Query: Does the Act of Mar. 18, 1903, contemplate juries of view to open roads?)

This act repeals the mandatory provision of section 3 of the Act of June 13, 1836, P. L. 551, requiring that viewers shall make report at the next term: *Road in Bushkill Township*, 12 North. C. R. 118.

1741. Whenever any report of viewers, or juries of view, appointed by the court of quarter sessions of this Commonwealth to assess damages and benefits for the opening, widening, narrowing or vacating of any road, street or highway, or the taking of private property in and by the construction or enlargement of any public work, highway or improvement, shall have been filed, the same shall be confirmed by the court of quarter sessions to which the said report is made, at the expiration of thirty days from the date of the filing thereof, unless exceptions thereto have been filed within such time.

Sec. 1, Act of March 27, 1903, P. L. 83.

Exceptions to a report of viewers should be filed at the proper term before the confirmation of the report. They cannot be exhibited for the first time in the supreme court: *Road in Collins Township*, 36 Pa. 85; *Road in Township of Lackawanna*, 112 Pa. 212.

In passing upon reports of viewers the judge of the court of quarter sessions is vested with discretion to approve or disapprove the report: *Benton Township Road*, 41 Super. Ct. 57; *Public Road in Bensinger Township*, 115 Pa. 436.

The court will strike off a decree of absolute confirmation of a report and appoint reviewers on a petition filed on the fifth day of the next term after the report filed, although it had been confirmed absolutely on the previous day under a rule of court requiring exceptions to be filed on or before the third day of the term: *Road in Penn and Warwick Township*, 11 Lanc. L. R. 331.

A conditional confirmation of a viewers' report is repugnant to this section: *Road in Lathrop Township*, 84 Pa. 126; *Road in O'Hara Township*, 87 Pa. 356.

1742. If no exceptions are filed within the time above prescribed, the report of the viewers, or jury of view, shall be confirmed by the court; and the party or parties to whom an award has been made, and from whose award no appeal has been taken, shall have the right to take such further appropriate legal proceedings as may be necessary and proper to enforce payment of said confirmed award, either in nature of a writ of *madamus*, execution, or otherwise.

Sec. 2, Act of March 27, 1903, P. L. 83.

1743. In all proceedings before viewers for the assessment of damages or benefits incident to any public improvement in any city, borough or township, when the report of viewers has been filed in court, it shall be the duty of such court to confirm such report absolutely at the expiration of thirty days after the filing thereof, unless in the meantime exceptions to such report or any portions thereof have been filed by any party interested, or unless an appeal from such report or any portion thereof is taken and demand for a jury trial is made before the expiration of said period of thirty days by any such party interested. Where exceptions or appeals are taken as to portions of any report the portions not excepted to or appealed from shall be confirmed absolutely at the expiration of said thirty days.

Act of May 10, 1921, P. L. 428.

1744. Viewers of public roads or highways, and of bridges, shall be entitled each to receive from the county treasurer one dollar for every day necessarily employed in that service, on producing a certificate from the clerk of the court of quarter sessions of the respective county that such service has been performed by them.

Sec. 59, Act of June 13, 1836, P. L. 551.

See notes to Sec. 1751.

This section has been supplied by section 1, Act of June 5, 1919, P. L. 393, amending Sec. 4, Act of June 23, 1911, P. L. 1123, which provides as follows:

"In counties having more than one million inhabitants each member of said board of viewers shall receive an annual salary of five thousand dollars payable quarterly out of the treasury of the proper county.

In counties containing less than one million inhabitants each member of the said board of viewers shall receive and be paid out of the treasury of the proper county the sum of five (5) cents per mile for each mile actually and necessarily traveled by him in the performance of the duties of his office; and each member of the said board of viewers shall receive, and be paid out of the treasury of the proper county, the sum of seven and fifty one-hundredth dollars (\$7.50) per day for each day actually and necessarily spent by him in performance of the duties of his office. The same shall be paid monthly under such conditions as to verification of time of employment as may be prescribed by the rules and regulations which shall be made in that behalf by the courts of the respective counties.

The costs of an original road view, although the report is adverse, should be paid by the county: *Road in West Donegal Township, 13 D. R. 88.*

Northumberland county is liable for the compensation of viewers of public roads within its borders: *Bower v. County of Northumberland*, 1 Northum. L. N. 24.

1745. If the court shall approve of the report of the viewers, allowing a road, they shall direct of what breadth the road so approved shall be opened. And at the next court thereafter, the whole proceedings shall be entered on record, and thenceforth, such road shall be taken, deemed and allowed to be a lawful public road or highway, or private road, as the case may be.

See. 4. Act of June 13, 1836, P. L. 551.

Whether the court approved the report of the viewers at the time it is returned or at a subsequent court, the road cannot be entered upon record as a road before the next court following that at which it shall have been approved and at which the order shall have been made directing it to be opened of a certain breadth. If a petition for a review be presented at the next court after the report of the viewers, reviewers shall be appointed and the order for opening the road is thereby superseded: *Road in Bucks County*, 3 Wharton 105; *Road in Middle Creek and Union Townships*, 9 Pa. 69; *Road in Pitt Township*, 1 Pa. 356; *Road in Ewings Mill*, 32 Pa. 282; *Road in Montrose*, 4 W. & S. 39; *Road in Township of Lackawanna*, 112 Pa. 212; *Hempfield Township Road*, 122 Pa. 439; *Derry Township Road*, 11 Super. Ct. 232; *Commonwealth v. Plymouth Township*, 13 Super. Ct. 209; *Lower Allen Township Road*, 18 Pa. C. C. 298; *Croyle Township Road*, 37 Super. Ct. 57; *Cherry Street, Norristown*, 8 Phila. 501.

It is fatal to the confirmation of a public road that no order was made by the court respecting the width of it: *Road Case*, 4 W. & S. 39; *Road in Pitt Township*, 1 Pa. 356; *Road in Norriton and Whitpain Townships*, 4 Pa. 337; *Road in Ewings Mill*, 32 Pa. 282; *Fermanagh Road*, 1 Super. Ct. 534; *Road in North Franklin Township*, 8 Super. Ct. 358; *Derry Township Road*, 11 Super. Ct. 232; *Road in Bloomsburg and Scott Townships*, 11 D. R. 93; *Road Case*, 3 W. & S. 559; *Marion Street in City of Lancaster*, 10 Lanc. L. R. 175; but see *Clowe's Road*, 2 Grant 129.

It is not in the power of the court to approve a report of viewers *nunc pro tunc* and immediately to issue an order to open: *Road in Ewings Mill*, 32 Pa. 282; *Road in Township of Lackawanna*, 112 Pa. 212; *Derry Township Road*, 11 Super. Ct. 232; *Lower Allen Township Road* 18 Pa. C. C. 298; *Croyle Township Road*, 37 Super. Ct. 57.

It is to be presumed that being appointed to lay out a public road the viewers would estimate on the usual width in assessing damages, and if the court in fixing the width should adopt a greater width the persons through whose land the road passes would have their remedy by appeal: *Fermanagh Road*, 1 Super. Ct. 534, but see *Road in Dover Township*, 12 York 26.

A formal order to open which the clerk issues as of course upon the final confirmation of a report is not necessary to complete the proceedings: *Delaware County Appeal*, 1 Super. Ct. 204.

The court has no power when fixing the width of a proposed road to make an order which would have the effect of widening that portion of an old road along which the new road has been located for the purpose of reaching its termination: *Road in Bloomsburg and Scott Townships*, 11 D. R. 93.

The proceedings for laying out and opening a new road, and for widening a street are governed by the same rules: *Cherry Street*, 8 Phila. 501.

1746. The breadth of a private road shall not in any case, exceed twenty five feet and the width of a public road shall not be less than thirty-three feet nor more than one hundred and twenty feet.

Sec. 5, Act of June 13, 1836, P. L. 551, as amended by Sec. 1, Act of April 6, 1921, P. L. 111.

Repealed by Act of July 14, 1917, P. L. 980 as to public roads in first class townships. For provisions relating to the width of public roads in first class townships see Section 510.

It is error to fix the width of a private road at twenty-three feet, the act limiting the width to twenty-five feet: *Killbuck Private Road*, 77 Pa. 39.

General authority to widen roads was given by the act of May 8, 1850, P. L. 715, amending the above section 5, Act of 1836, P. L. 555. The act of June 7, 1907, P. L. 452, limited the width of public roads to eighty feet. These general laws did not have the effect to repeal the local Act of April 13, 1843, P. L. 218, relating to Erie County, but control the width of a road: *Lowry Appellant v. Miller Creek Township*, 61 Super. Ct. 285.

It is not improper for the viewers to suggest the width of the road at the time of filing their report: *Road in Lower Windsor Township*, 30 York 148.

It is error for the court to fix the width of a road at twenty-five feet after the jury had fixed the width at twenty feet and assessed damages as of that width: *Road in Dover Township*, 12 York 20.

1747. The owner of any land through which a public road shall be opened as aforesaid, may, within one year from the opening of the same, apply by petition to the court of quarter sessions of the proper county, setting forth the injury which he or she may have sustained thereby, and thereupon the said court shall appoint six disinterested persons to view the premises and assess the damages if any, which such petitioner may have sustained.

Sec. 7, Act of June 13, 1836, P. L. 551.

This section is impliedly amended in so far as the number of persons to be appointed as viewers is provided for, by Sec. 5, of the Act of June 23, 1911, P. L. 1123. See Sec. 1726.

Damages for the opening of a public road may now be assessed by the viewers appointed to lay out the road under the provisions of the Act of May 14, 1874, P. L. 164. See Sec. 1738.

The word "opened" in connection with this act means the actual taking of the ground and the party entitled to the damages is the owner at the time of the actual taking, that is, the opening of the road, and not the owner at the time of confirmation of the report: *Mann v. County of Allegheny et al.*, 65 P. L. J. 316; *Meginnis v. Nunamaker*, 64 Pa. 374.

1748. Petitions for the assessment of damages for the opening or widening of any street, road or highway, when the damages are not assessed by the view opening the road, may be filed in the court of quarter sessions within the period of six years from the confirmation of a report, or the entry of a decree opening the said street, road or highway, or within six years from the date of notice of the intended

opening of the same, under an ordinance or resolution duly passed, but not thereafter. All claims shall be forever barred after the expiration of the said period of six years.

Act of May 23, 1891, P. L. 109.

The limitation prescribed by the act begins to run from the date of the notice of the intended opening, and not from the date of the ordinance nor from the date of the approval of the bond: *Whitby Avenue*, 22 *Super. Ct.* 526.

It seems that, under this act, viewers may be appointed to assess damages for taking land for a road where the viewers who laid out the road failed to make assessments or secure releases: *Allegheny Township Road*, 19 *Pa. Ct. 30*; *Road in Pine Creek Township*, 17 *D. R.* 86, s. c. 24 *Mont.* 9.

1749. The viewers so appointed shall make report in writing to the next court of quarter sessions, and if their report be approved by the court, the amount of damages awarded shall be paid by the county treasurer, out of the county stock, to the party entitled thereto.

Sec. 8, Act of June 13, 1836, P. L. 551.

In any proceedings under the General Road Law for the assessment of damages for the opening of a street the court of quarter sessions may permit the landowner in whose favor the viewers have awarded, to remit a part of his damages, and may confirm the report for the balance of the award: *In the matter of the Opening of Wharton Street*, 48 *Pa.* 487.

The damages found and confirmed shall be paid to the owner through whose land the road is opened. The party to whom the damages are awarded in the first instance has no vested right to receive them until the final order; and if, before that, he sells and conveys the land, the right to receive them passes with the land to the vendee, unless prevented by some special agreement. The vendee may recover the damages from his vendor to whom they were paid by the county treasurer: *Meginnis v. Nunamaker*, 64 *Pa.* 374; *Hann v. Allegheny County, et al.*, 65 *P. L. A.* 316.

On question of ownership and right to damages by a vendee not in possession, see *Fifth Street*, 22 *Super. Ct.* 214.

Where a road is laid out and opened in a township of the second class on petition of taxpayers in proceedings under this act and its supplements, the county and not the township is liable for damages done to property through which the road passes: *Woodward v. Fayette Co.*, 258 *Pa.* 375.

The Act of May 27, 1913, P. L. 633, does not change the law as to who is liable for the damages for the opening and vacating of public roads. Damages for opening a road in a township of the second class are properly assessed against the counties: *Road in Fulton Township*, 23 *D. R.* 678, s. c. 31 *Lanc. L. R.* 134, 28 *York* 94.

1750. In all cases of assessment of damages for the opening or widening of any street or highway in any borough, city, or other municipality, in this Commonwealth, the award of damages, if any, shall include all damages due to the grade at which said street or highway is to be opened or widened, and the plan attached to the report of the viewers awarding the damages shall have therein a pro-

file plan showing the existing grade, as well as the grade to which said street is to be opened and widened.

Sec. 1, Act of June 15, 1915, P. L. 985.

Repealed by Act of July 14, 1917, P. L. 998, in so far as relates to townships of the first class.

1751. The expense of the view to assess the damages sustained by the owner of land taken as aforesaid for a public road, shall be paid by the respective counties; and the expense of such view, in the case of a private road, shall be paid by the person or persons at whose instance the same was allowed.

Sec. 55, Act of June 13, 1836, P. L. 551.

The act of May 13, 1874, P. L. 138, as amended by the Act of June 25, 1895, P. L. 284, provided that "the pay of viewers and reviewers * * * shall be paid by the proper county in all cases at the time of the session or term of court to which their report is rendered and filed, and the petitioners asking for their appointment shall pay the same amount into the county treasury in all such cases as the court, by order, may direct, and the court may require said petitioners to file a bond, together with their petition in a sufficient sum to secure the payment of the same when the case is concluded." This act was repealed as to townships by the General Township Act. This would seem to reinstate the above section under which the expenses of the view were paid by the county, and under which in *Warriorsmark Trcp. Road, 126 Pa. 305*, *Newville Road Case, 8 Watts 172*, and *Hopewell Trcp. Road, 12 Pa. C. C. 517*, it was held that the expenses of reviewers was not payable by the county; but it would seem that all costs and expenses of views and reviews are now paid by the county under the provisions of the Act of June 23, 1911, P. L. 1123. See *Reber's Petition, 235 Pa. 622*.

1752. Provided, That in assessing the damages as aforesaid, the viewers shall take into consideration the advantages derived from such road passing through the land of the complainant.

* Sec. 9, Act of June 13, 1836, P. L. 551.

It is not necessary that the report of the viewers should state that in the assessment of damages they have taken into consideration the advantage accruing to the land owner from the opening of the road. It will be presumed that the viewers performed their duty and that all things were rightly done unless the contrary is shown: *Road in South Abington Township, 109 Pa. 118*.

1753. The 7th, 8th and 9th sections of the act of the 15th June 1836, entitled "An act relating to roads, highways and bridges," shall be construed to apply to claims for damages, in consequence of injuries sustained from the location and opening of a road, under the provisions of any special act of assembly, unless where the same is otherwise provided for by law.

Resolution of May 29, 1840, P. L. 749.

See *Sharet's Road, 8 Pa. 89*; *Yost's Report, 17 Pa. 524*; *Smedley v. Irwin, 51 Pa. 445*; *Township of East Union v. Comrey, 100 Pa. 362*.

1754. In all cases where a jury of view, review or re-review, appointed by any court of quarter sessions in this Commonwealth, has or shall hereafter assess damages for the laying out, widening, grading, opening or changing the lines of [or] grades of any public street, road or alley in this Commonwealth, the county commissioners of the proper county, or the city or other municipal corporations required to pay the damages, or any owner or tenant of property through which said public street, road or alley, has been or shall be laid out, widened, graded, opened or changed, or which is affected by the change of grades, shall have the right to appeal to the court of common pleas of the proper county, from the decree of the court of quarter sessions confirming the award of such jury, for the determination of the question of damages by a jury, according to the course of the common law: Provided, The appeal be taken within thirty days after the final confirmation of the report of said jury: Provided, That notice be given to the commissioners of the proper county or their clerk, of the time and place of holding such view.

Sec. 1, Act of April 15, 1891, P. L. 17.

The second proviso of this Act "Provided, That notice be given to the commissioners of the proper county or their clerk, of the time and place of holding such view," violates section 3, Article 3 of the Constitution inasmuch as the subject of the proviso is not so clearly expressed in the title of the act as to give any notice of the legislative intent: *In re Road in Otto Township*, 181 Pa. 390.

This act is superseded by the Act of May 26, 1891, P. L. 116, *Heist v. Montgomery Co.*, 1 D. R. 546; *Public Road in East Earl Township*, 28 Lanc. L. R. 409.

The findings of fact of viewers may be inquired into by the court upon exceptions and may be set aside, if grossly and palpably erroneous. The exceptions filed may be supported by testimony before the court: *Walnut Street*, 24 Super. Ct. 114.

1755. Any appeal taken pursuant to this act shall be signed by the party or parties taking the same, or by his or their agent or attorney, and shall be accompanied by an affidavit of the party appellant, or his or their agent or attorney, that the same is not taken for the purpose of delay, but because the affiant firmly believes that injustice has been done.

Sec. 2, Act of April 15, 1891, P. L. 17.

The entertainment of viewers by a party in interest is contrary to public policy and the courts will not draw the line between harmless and improper entertainment. Such entertainment is sufficient ground for setting the report aside: *Road between Pricville and Scott Township*, 1 Lack. J. 170.

1756. Whenever any report of viewers, appointed by any court of quarter sessions to assess damages for the opening, widening or change of grade of any street, road or highway, shall be confirmed by

the court of quarter sessions to which the said report is made, an appeal may be taken from the said court of quarter sessions by any party aggrieved by the said decree of confirmation, to the court of common pleas in said county for a trial of the question of damages by jury, according to the course of common law, within thirty days from the entry of said decree of confirmation by the court of quarter sessions, and not afterwards.

Sec. 1, Act of May 26, 1891, P. L. 116.

1757. Any appeal taken in pursuance of this act, shall be signed by the party or parties taking the same, or by his or their agent or attorney, and shall be accompanied by an affidavit of the party appellant, or of its, his or their agent or attorney, that the same is not taken for the purpose of delay, but because the affiant firmly believes that injustice has been done.

Sec. 2, Act of May 26, 1891, P. L. 116.

The appeal under this act may relate only to the amount of damages, not to the findings as to necessity, width, location, etc., of the road: *In re Private Road of Wright in Black Creek Township*, 19 Luz. 37.

The decree referred to in this act means the final confirmation of the report and an appeal therefrom must be taken within thirty days from the entry of such final confirmation: *Cheltenham Township Road*, 11 Pa. C. C. 671; *Heist v. Montgomery Co.*, 1 D. R. 546.

An appeal from the report of a road jury assessing damages, filed before the final confirmation of said report, is premature and will be stricken off: *Heist v. Montgomery County*, 1 D. R. 546.

This act does not apply to appeals from assessments of damages for the vacation of streets: *Ball Street No. 2*, 27 Pa. C. C. 600.

This act gives an appeal from the decree confirming the report and is not in conflict with nor does it repeal the Act of June 13, 1874, P. L. 283, which gave an appeal from the award of the viewers. The two systems are not irreconcilable but may run together with entire harmony: *Vernon Park, Philadelphia's Appeal*, 163 Pa. 70.

A rule to show cause is not necessary to the validity of an appeal. The appeal, if in proper form and within the time limited, is a matter of right and not within the discretion of the court. An appeal will be sustained if entered in the quarter sessions within thirty days from the confirmation of the report. The certificate or transcript of the appeal need not be entered in the common pleas within the thirty days: *Mansfield Borough's Appeal*, 158 Pa. 314.

The party taking an appeal under this act submits his claim, so far as the question of damages is concerned, to the jurisdiction of the common pleas, and cannot, pending the appeal, invoke the jurisdiction of the quarter sessions upon that question: *Walnut Street*, 24 Super. Ct. 114; *Widening of Chestnut Street*, 128 Pa. 214.

A landowner is entitled to an appeal under this act, to the common pleas court from the report of a road jury refusing him damages, although under a local act the report of the jury is final: *Kohler v. Butler County*, 31 Super. Ct. 305; *In re. Public Road in East Earl Township*, 28 Lanc. L. R. 409. This act does not repeal the Act of May 24, 1878, P. L. 129: *Correll v. Mt. Jewett Boro.*, 49 Super. Ct. 118.

1758. In all cases of views for any purpose mentioned in this act, the respective court shall, on petition of any person interested, direct a second view or review for the same purpose: Provided, That application therefor be made at or before the next term of the said court, after the report upon the first view.

Sec. 25, Act of June 13, 1836, P. L. 551.

No review is allowable where there has been no report either in favor of or against the road or street asked for. The proper course is to apply to the court to set aside the appointment of viewers and to appoint new ones: *Charlotte Street*, 23 Pa. 286.

It is obligatory upon the court in road cases to grant a review on petition being filed at or before the next term after the report of viewers is filed, even though a decree of absolute confirmation of a report of viewers has been entered: *Road in Penn and Warwick Townships*, 11 Lane. L. R. 331.

Under this section a review is a matter of right provided application therefor by a party interested be made at or before the next term of court after the report upon the first view: *Overfield Township Road*, 25 Super. Ct. 5; *Lect Township Road*, 159 Pa. 72; *Road in Indiana County*, 51 Pa. 296.

A rule of court prescribing that a petition for a review must be made before the expiration of the first week of the term succeeding that in which the report of viewers is filed, is a valid rule and not in conflict with the above section: *Hampton Township Road*, 72 Super. Ct. 484.

Reviews made by reviewers appointed under this section are subject to the same rules which regulate views. The reviewers are to be governed by the provisions already made in respect to the first view: *Heidelberg Township Road*, 47 Pa. 536.

The application for appointment of reviewers must be made at or before the next term of the court following the report on the first view and it is a fatal objection that the petition for a review was not presented or acted upon until two years after filing of the original report: *Road in Indiana County*, 51 Pa. 296; *Road in West Bradford Township*, 2 Chester 313.

The appointment of reviewers on a petition filed with one term intervening is too late: *Road in Upper Yoder Township*, 61 Super. Ct. 394; *Newton Township Road*, 62 Super. Ct. 519; *Road in Lackawanna Township*, 112 Pa. 212; *Vernon Township Road*, 70 Pa. 23; *Palmer Township Road*, 4 D. R. 568.

A review may be applied for at the same time or at the next term after the view is returnable, but an order for review issued at the term at which the view is returnable must be returned at the next term. The refusal of the court, on motion of petitioners, to continue the order for review is a matter of discretion and is not assignable as error: *Duff's Private Road*, 66 Pa. 459.

Under this section application may be made any time within the "next term" and the time for filing the petition for review does not expire on the first day of the term: *Mifflin Township Road*, 16 Pa. C. C. 74.

An order to review a road may be reviewed and continued by the court from time to time, but an order having expired prior to its execution, all subsequent proceeding under it are unauthorized: *Road in Reserve Township*, 2 Grant* 204.

Under this section a petition for the appointment of reviewers must be presented in open court and not to a judge at chambers within the next term after the filing of the report in court: *Public Road in East Pennsboro Township*, 26 D. R. 920.

A petition for the appointment of reviewers under this section must be for the same purpose as that for which the viewers were appointed: *Franklin Township Road*, 40 Pa. C. C. 484; *Road near La Grange Station*, 43 Pa. C. C. 383.

The provision of this section limiting the time for the filing of a petition for a review does not apply to a petition for damages: *In re petition of Lewis Palmer*, 1 Del. 269; *Newville Road Case*, 8 Watts 172.

The appointment of one of the original petitioners for a road as a reviewer is an irregularity that is fatal to all proceedings subsequent to the presentation of the petition of the appointment of reviewers: *Ohio and Ross Township Road*, 166 Pa. 132.

The court has no jurisdiction to appoint reviewers without being petitioned to do so: *Road in Upper Yoder Township*, 129 Pa. 640.

1759. The expense of views of private roads, and the expense of any review, or of any view subsequent to a review, of a private or public road shall be wholly paid by the persons applying for the same.

Sec. 54, Act of June 13, 1836, P. L. 551.

This section seems to be supplied and repealed by the Act of June 23, 1911, P. L. 1123. See notes to section 1751 supra.

The following cases were decided under the above section.

There is no provision in the act for the payment of the viewers when a separate view or review is ordered upon the question of damages. It is therefore error for the court to impose the costs of such a view upon the county: *Warriorsmark Township Road*, 126 Pa. 105; *Newville Road case* 8 Watts 172.

The expenses of reviews of a public road, as well as any subsequent view, must be paid by the petitioners. The fact that the review is a matter of right does not change the plain reading of the act: *Ackerly v. Lackawanna County*, 1 Lack. L. N. 14.

1760. Reviewers and viewers, upon a third or any subsequent view, shall be entitled each to receive the like compensation from the persons at whose instance they were appointed, for every day by them necessarily employed in that service.

Sec. 60, Act of June 13, 1836, P. L. 551.

This section seems to be supplied and repealed by the Act of June 23, 1911, P. L. 1123. See notes to section 1751.

The costs of a third view cannot be imposed upon the original petitioners, as it may be that they are not the persons who require the re-review: *Hellertown Road*, 5 W. & S. 202.

(b) Damages For Laying Out Roads in Special Townships, General Road Law to Apply When Special Laws Repealed. Review of Proceedings.

1761. In the several counties of this Commonwealth, where by existing laws the duty of laying out public roads or highways is imposed upon the supervisors or commissioners of roads and highways of the respective townships, it shall be the duty of said supervisors or commissioners whenever they have decided to report in favor of laying out a road, to notify the auditors of the said township of such decision; and thereupon the said supervisors or commissioners together with said auditors, shall endeavor to obtain releases from claims for damages as is provided in the act to which this is a supplement, and upon their failure to procure such releases from all the persons through whose improved land they have decided to lay out a road, it shall be their duty to assess the damages, if any have been sustained by the persons not releasing as aforesaid, and to file the same and all releases obtained with their report in favor of opening said road with the clerk of the proper township; and any person interested who may feel aggrieved by the assessment of damages to him, may at any time after said reports have been filed and within thirty days after said road has been opened, appeal from said assessment of damages to him in the manner now provided by law: Provided however, That whenever a continuous road or highway through different townships is laid out, said releases shall be obtained or damages assessed by the supervisors or commissioners and auditors of the township in which the improved land lies through which said road or highway is laid.

Sec. 1, Act of May 8, 1876, P. L. 145.

This act supplements the Act of May 14, 1874, P. L. 164.

The provisions of this act obviously relate to special townships, as the power to lay out roads by supervisors is not derived from any general statute.

1762. Where roads have heretofore been laid out by said supervisors or commissioners, but not opened, and neither releases obtained nor damages assessed it shall be the duty of the clerk of the proper township upon the request, in writing, of any one interested, to notify the supervisors or commissioners and auditors of the township of said request, and it shall, therefore, be the duty of said supervisors and auditors or commissioners and auditors, as the case may be, as soon as practicable, to endeavor to obtain releases or assess damages as is provided in section one of this act and file the same, with said clerk, and upon their being so filed, they shall have the same effect as if filed with the report laying out the road: Provided, that this act shall not be so construed as to repeal any local of special law.

Sec. 2, Act of May 8, 1876, P. L. 145.

This act supplements the Act of May 14, 1874, P. L. 164.

1763. When any local or special law, in any of the townships of this commonwealth, which provided for the laying out, opening and keeping in repair the several roads in the same, or which provided for the levying, assessment and collection of road taxes, has been or shall hereafter be repealed, then and in every such case, the general road law shall apply to, govern and control the said township, the same as though they had never been acting under, or affected by, any such local or special law.

Act of June 10, 1881, P. L. 105.

1764. In the several counties of this commonwealth, where by existing laws the duty of laying out public and private roads is imposed upon the supervisors or road commissioners of the respective township, any person interested, who may feel aggrieved with the assessment of the amount to be paid for the privilege of participating in the use of a private road, either as to the amount to be paid to the owner of the soil, or to the person or persons who have constructed such road, may, at any time within thirty days from the filing of such report, appeal from said assessment, in the same manner as now provided by law for appealing from the assessment of damages for the laying out and opening of public roads.

Act of May 23, 1887, P. L. 180.

For provisions relating to appeals from assessments of damages for the opening and laying out of public roads see Secs. 1754-1757.

1765. Whenever the road commissioners of any township are by law invested with the authority and power to lay out, open, or vacate public or private roads in their respective townships, or, in case of appeal, road commissioners from other townships than that in which the road lies, and no appeal to any court is otherwise provided for, it shall be lawful for, and the duty of, the court of common pleas of the respective counties to issue writ, in the nature of a writ of certiorari, directed to the commissioners of the township in which the road lies, and to the town clerk having in charge the record of such road, commanding that a certified copy of the record and all the proceedings had in the matter of laying out or vacating any road shall be forthwith sent to the said court, under the hand and seal of the said town clerk; and the said court may examine the same as to the regularity of the proceedings had, and the jurisdiction of the road commissioners, either of the townships in which the road lies, or from other townships, in case an appeal has been had; and if such proceedings are contrary to law, or if the return made to the town by the road commissioners, either in laying out or

vacating a road is not according to law, or if the road commissioners are for any reason without jurisdiction, or for any reason incapacitated to act in the particular case, the said court shall set the said proceedings aside, either in whole or in part, and such proceedings shall then be void and of no effect so far as set aside. An appeal shall lie from the order of the court, either in confirming the proceedings or setting them aside, as in other cases. And in case the regularity of the proceedings be sustained by the court, a jury trial may be held in said court, to determine all questions of fact involved, with the right to either party to enter exceptions and appeal to the Superior and Supreme Courts, as in other cases.

Sec. 1, Act of July 2, 1901, P. L. 607, as amended by Act of June 9, 1911, P. L. 742.

This act is not a local act although it applies only to certain townships in three counties. The provision for a certiorari to the commissioners is not unconstitutional, although they are not designated in Sec. 10, of Article V. of the constitution. *Earl v. Ryan*, 41 Super. Ct. 448

This act confers on the court of common pleas authority to set the proceedings aside, either in whole or in part, but in the exercise of this power regard must be had to the nature of the proceedings and to the authority of the viewers thereunder. It was not the intention to confer jurisdiction on the court to accomplish a result which could not have been accomplished by the report of the viewers, or a result radically different from what the viewers manifestly intended: *Pike Township Road*, 30 Super. Ct. 644.

This act does not authorize the court by mandamus to the reviewers to cure fatal defects in their reports, or failure by them to comply with the provisions of the statutes and legal requirements in such proceedings; *Overton Twp. Public Road*, 12 D. R. 317.

Facts which show clearly that the township commissioners had no jurisdiction or that their action was unlawful may be shown de hors the record: *Frost v. Scott et al.* 12 D. R. 339.

A report of reviewing road commissioners in proceedings under this act signed by only two of the three commissioners, and not showing on its face that all of the commissioners participated in the review, is not fatally defective: *Farrell Road*, 35 Super. Ct. 86.

The qualifications of a reviewer may be considered in proceedings under this act: *Commonwealth v. Rogers*, 59 Super. Ct. 265.

1766. The court shall provide by appropriate rules the manner of issuing such certiorari, the practice to be followed in disposing of the same, and shall direct who shall pay the costs of the proceeding on the certiorari.

Sec. 2, Act of July 2, 1901, P. L. 607.

1767. The writ of certiorari issued in pursuance of this act shall be a supersedeas, but no such writ shall issue after thirty days after the report of the road commissioners of the township in which the road lies, or the report of the road commissioners of other townships in case of an appeal, has been filed with the town clerk.

Sec. 3, Act of July 2, 1901, P. L. 607.

(c) Private Roads.

1768. The several courts of quarter sessions shall, in open court as aforesaid, upon the petition of one or more persons associations, partnerships, stock companies or corporations, for a road from their respective lands or leaseholds to a highway or place of necessary public resort, or to any private way leading to a highway, direct a view to be had of the place where such road is requested and a report thereof to be made, in the same manner as is directed by the said act of thirteenth June, one thousand eight hundred and thirty-six.

See 11, Act of June 13, 1836, P. L. 551, as amended by Sec. 1, Act of April 4, 1901, P. L. 65.

For provisions relating to the appointment of viewers the filing of their reports and other proceedings thereon see Sec. 1726.

For provisions relating to the vacation of private roads see Sec. 1780.

This section authorized the laying out of a private road from a field or plantation separated from the owner's mansion house or dwelling, over another person's land to a public road. Where a deed for a field or plantation grants a right of way to continue until the grantee shall secure a private or public road direct to the land granted, from his own premises, the grantee has the right to institute proceedings for a private road under the Act of June 13, 1836, notwithstanding the grant of right of way in the deed: *Stewart's Private Road*, 38 *Super. Ct.* 339.

A report laying out a private road between termini other than those named in the act is defective and will be set aside: *In re Sandy Lick Creek Road*, 51 *Pa.* 94; *Keelings Road* 59 *Pa.* 358; *Killbuck Private Road*, 77 *Pa.* 39.

The title of the amending act of April 4, 1901, P. L. 65, gives sufficient notice of the subject, and the act is not unconstitutional as defective in title. Legislation authorizing the taking of private property for private use, as provided by the private road acts, is not unconstitutional; *Dickinson Township Road*, 23 *Super. Ct.* 34.

Where it is proposed to open a private road over the land of another the record must show that the latter has personal notice of the time and place of the meeting of the viewers and of the time and place for the assessment of damages, otherwise the return will not be confirmed. Distinguished from rule in cases of public roads: *Road in Plumcreek Township*, 110 *Pa.* 344.

A report of viewers which lays out a private road partly over a public road should not be confirmed by the Quarter Sessions: *Boyers Road*, 37 *Pa.* 257.

1769. If it shall appear by the report of viewers, to the court directing the view, that such road is necessary, the said court shall direct what breadth the road so reported shall be opened; and the proceedings in such cases shall be entered on record, as before directed, and thenceforth such road shall be deemed and taken to be a lawful private road.

See 12, Act of July 13, 1836, P. L. 551.

Under Sec. 5, of the Act of June 13, 1836, as amended by the Act of Apr. 6, 1921, P. L. 111, the breadth of a private road is not to exceed twenty-five feet; see Sec. 1746.

Failure of the court to fix the width of the road upon confirmation of the report is a fatal defect and will be taken notice of by the appellate court in appeal, even though not assigned for error: *Boyer's Road*, 37 Pa. 257.

The return for private use is a sufficient compliance with the law touching its necessity: *Road in Reserve Township*, 2 Grant 204.

A report that there is occasion for the road is sufficient: *Pocopson Road*, 16 Pa. 15.

A report of viewers laying out a private road is fatally defective in not setting forth that such road is necessary: *In re Sandy Lick Creek Road* 51 Pa. 94.

1770. In all cases of a private road, it shall be lawful for the owners of the land over which the same may be laid out, or authorized, to apply to the court aforesaid for leave to hang and maintain, at their own expenses, swinging gates across such road; and thereupon the court shall direct the viewers appointed to view such road, or in case the road has been already laid out, may appoint other viewers in manner aforesaid, to inquire and report whether the same may be done, without much inconvenience to the persons using such road.

Sec. 13, Act of June 13, 1836, P. L. 551.

For provisions relating to the appointment of viewers see Section 1726 and notes thereunder.

1771. In case of a separate view directed upon an application for leave to hang and maintain gates across a private road as aforesaid, the expense of such view shall be paid by the applicants.

Sec. 57, Act of June 13, 1836, P. L. 551.

1772. If it shall appear to the court that a gate or gates may be hung as aforesaid, according to the prayer of the party, without much inconvenience to the person or persons using such road, they shall decree accordingly; and in such decree they shall order and direct that such gate or gates be made and kept in repair, and made easy for passing, by the respective owners of said land.

Sec. 14, Act of June 13, 1836, P. L. 551.

1773. All private roads shall be opened, fenced and kept in repair by and at the expense of the person or persons, respectively, at whose request the same were granted and laid out, and by their heirs and assigns.

Sec. 15, Act of June 13, 1836, P. L. 551.

He who causes a private road to be laid through his neighbor's land shall do all the necessary fencing: *Fleming v. Ramsey*, 46 Pa. 252.

1774. The damages sustained by the owners of the land through which any private road may pass, shall be estimated in the manner provided in the case of a public road and shall be paid by the persons

at whose request the road was granted or laid out: Provided, That no such road shall be opened, before the damages shall be fully paid.

Sec. 16, Act of June 13, 1836, P. L. 551.

For provisions relating to the manner of estimating damages in cases of public roads see Sec. 1747 to 1757.

1775. Whenever any person shall be desirous to make use of a private road laid out on the petition and at the expense of others, such person may apply by petition to the court of quarter sessions of the respective county, to be admitted to participate in the privilege of the said road, and thereupon such court shall have power to determine what sum he shall contribute to the persons at whose expense the said road was laid out, and also what further sum he shall pay to the owners of the soil over which the said road was made; and, upon the payment thereof, such person shall be entitled to equal rights and privileges, and be subject to like duties and liabilities, with the original applicants for said road.

Sec. 17, Act of June 13, 1836, P. L. 551.

(d) Road on State Boundaries.

1776. If the legislature of the state of Ohio shall concur that, for the purpose of opening and keeping in repair any road now or hereafter to be laid out, by authority of law, on the line between the states of Pennsylvania and Ohio, it shall be the duty of the road supervisors, or other officer or officers having charge of the public roads in any two adjoining townships through which such road may pass, one of which shall be on either side of said line, to meet annually on the first day of April, or as soon thereafter as conveniently may be, and lay off so much of said road as shall lie between such adjoining townships, into sections not exceeding one mile in length, as they may think most convenient, and suitably mark the same, and divide said sections equally between said adjoining townships, and cause a record thereof to be made on the book of the township clerk of said adjoining townships, respectively; and it is hereby made the duty of said clerks to make such record; and thenceforth it shall be the duty of such supervisors, or other officer or officers as aforesaid, to open and keep in repair such portion or portions of such road, as may thus be allotted to the township of which they may be supervisors, or other officers as aforesaid, respectively, under the same penalties as (are) or may be imposed upon such officers by the road laws of said states, respectively.

Sec. 1, Act of March 30, 1848, P. L. 308.

(e) Vacation and Changing of Roads.

See also Secs. 1729, 1732, 1741.

1777. The courts aforesaid shall, within their respective counties, have authority upon application to them by petition, to inquire of and to change or vacate the whole or any part of any private or public road which may have been laid out by authority of law, whenever the same shall become useless, inconvenient or burdensome; and the said court shall proceed therein by views and reviews, in the manner provided for the laying out of the public roads and highways.

Sec. 18, Act of June 13, 1836, P. L. 551.

For provisions relating to the laying out of public roads see Sec. 1726.

The decree of confirmation is final, until reversed on certiorari, and the road opened can be got rid of only in the manner prescribed in Secs. 18 and 19 of the Act of 1836. *Hunter's Private Road*, 46 Pa. 250.

There is no authority under this section to change or vacate a road which has been properly laid out but never opened. This can only be accomplished by a petition for a review or by proceedings under the 19th section of the act: *Vernon Township Road*, 70 Pa. 23.

A petition to vacate a road must set forth how it became a public road in order to give the court jurisdiction. If the road is a private road resting upon express grant, the evidence of which is still in existence, the court would have no jurisdiction to vacate it: *Drumore Township Road*, 32 Pa. C. C. 105, s. c. 15 D. R. 625, 23 Lanc. L. R. 123.

A petition to vacate a road avers sufficient facts when it sets forth that the road has been supplanted by another road, half a mile south of it, and that it has a county bridge now old and dangerous and several expensive culverts on it to be rebuilt if the road be not vacated: *South Shenango Township Road*, 25 Pa. C. C. 587.

Whenever a portion of a road is abandoned under this section, the report of the viewers should find that the portion abandoned has become or will become, by reason of the alteration, "useless, inconvenient, or burdensome:" *Public Road in Potter and Tioga Counties*, 16 D. R. 456, s. c. 8 North C. R. 91.

Under a petition and order to view, vacate and supply a road, the viewers, though they return an entire new road, may vacate only such parts of the old road as they find to be useless, inconvenient or burdensome: *Loretto Road*, 29 Pa. 350.

Where the petition was that a certain road should be vacated and the court appointed viewers, but the order directed that the viewers should proceed to lay out the road and the viewers reported in favor of vacating the road, and no exception was made in the court below on this ground the supreme court affirmed the proceedings: *Allentown Road*, 5 Wharton 442.

In appeal from proceedings vacating a road the appellate court can consider only the regularity of the proceedings. The evidence is not a part of the record and need not be printed by the appellant in his paper book: *Keller's Appeal*, 5 Super. Ct. 492; *Manheim Township Road*, 12 Super. Ct. 279.

The Act of April 18, 1919, P. L. 72, provides that in all appeals to the Supreme or Superior Courts, the testimony taken shall be filed in the proceedings and shall be reviewed by the appellate court as part of the record.

This section is not repealed or modified by the Act of May 31, 1911, P. L. 468, relating to State highways and conferring upon the State Highway Commissioner power under certain circumstances to divert the course or direction of the routes of State highways designated in such act: *Saeger v. Commonwealth*, 258 Pa. 249, *aff.* 45 Pa. C. C. 452.

The Act of May 8, 1851, applies only to highways of incorporated towns, and does not as to the general highways of the commonwealth supersede Secs. 18 and 19 of the act of June 13, 1836, P. L. 551: *In re Road in Exeter*, 2 Woodr. 209.

The court is not deprived of jurisdiction to appoint viewers because it is alleged in exceptions filed to the petition for their appointment to vacate a piece of road, that the vacation asked for will leave a cul de sac in the unvacated part: *Road in Newton Township*, 23 D. R. 482.

The court is without authority to vacate or change a road or any part of it, without the affirmative report of a board of viewers: *Krebs Road*, 64 Super. Ct. 492.

1778. Roads laid out and confirmed as aforesaid, but not opened, may be vacated and annulled upon the petition of a majority of the original petitioners for the said road, resident within the respective county, in the same manner as other roads may be vacated; Provided, That no person residing or owning land along the route of such road, shall in such case be a viewer or reviewer.

Sec. 19, Act of June 13, 1836, P. L. 551.

It is unnecessary, under this section, to attach a plot or draft to the report of the viewers: *In re road in Strasburg Township*, 15 D. R. 666.

A review in order to vacate a road not opened, but in favor of which a report has been made and confirmed, may be granted under this section, on the petition of a majority of the original petitioners for the road, and such a proceeding and report against the opening of the road does not admit of re-examination by re-review; in order to obtain the road, proceedings must be had do novo. It is not essential that it be stated in a petition for a review to vacate a road not opened, that it proceeds from a majority of the original petitioners for the road; if it appear from the record that it was signed by a majority of such persons it is sufficient: *Road in Augusta Township*, 17 Pa. 71.

If a particular road has been laid out and opened, the power to vacate can be exercised only when the road has become useless, inconvenient or burdensome; if it has been laid out and not opened, the power to vacate can be exercised only when a majority of the original petitioners for said road, resident in the county, invoke it: *Madison and Harmony School House Road*, 37 Pa. 417.

Where a road has been confirmed and ordered to be opened, and has been partially opened, there is no authority under the act of 1836, to vacate the part not opened: *Road in Greenwich Township*, 11 Pa. 186. *But see opinion in Madison and Harmony School House Road* 37 Pa. 417.

See also Sec. 1779, Act of May 3, 1855, P. L. 422.

Where a road has been laid out and confirmed by the court but not opened, the power to vacate is called into exercise by the mere request of a majority of the original petitioners to have it vacated. In such a case the petition to vacate may be filed and docketed in the original proceedings. If the road has been opened in part an application by the original petitioners to have the road

vacated cannot be sustained; but such an application will not be defeated by merely showing that the road has been worked on by the public authorities. It must appear that part of the road has actually been opened, for safe and convenient public travel: *Road in Heath and Barnett Townships*, 21 Pa. C. C. 254, s. c. 4 Lack L. N. 261.

Where a road laid out is not actually opened, the petition to vacate must be signed by a majority of the original petitioners for the road: *Wyoming County Road*, 13 D. R. 145, s. c. 5 Lack J. 170; *Road in Rapho and East Donegal Townships*, 17 Lanc. L. R. 108, s. c. 7 Del. 571, 7 North C. R. 171.

Where a road has been laid out and confirmed and partly opened this section does not apply and the petition need not be signed by a majority of the original petitioners. In such a case the proceedings to vacate are authorized by the Act of May 3, 1855, P. L. 422. There is no requirement in the latter act that the majority of the petitioners shall join in the application to vacate. *Vacating Road in Hamor Township*, 1 Lch. 52.

Signers to a petition to vacate a public road ordered to be opened but not yet opened may withdraw their names before the petition is presented to court whether or not they were deceived by misrepresentations in signing it, and when such withdrawal has reduced the number of petitioners to less than a majority of the original petitioners for the road, the petition will be dismissed: *Rapho Township Road*, 22 Lanc. L. R. 29; *In re vacation of road in Huntington Township*, 18 Luz. L. R. R. 14.

It is not necessary to attach a plot or draft to a report of viewers in proceedings under this section, for the vacation of a road laid out but not opened: *In re Road in Strasburg Township*, 15 D. R. 666, s. c. 23 Lanc. L. R. 94.

1779. That the several courts of quarter sessions of this commonwealth shall have power, within their respective counties, to inquire of and to change or vacate the whole or any part of any public or private road which may have been laid out by authority of law, and opened in part; and the said court shall proceed therein by views and reviews in the manner provided for the vacating of other roads by existing laws; Provided, That this act shall not apply to state roads authorized by a special law, or to any street, lane or road within any incorporated city or borough.

Sec. 1, Act of May 3, 1855, P. L. 422.

Under the above section the petition to vacate a public road need not be signed by a majority of the original petitioners for the road. The petition should in a clear and distinct manner set forth the situation and other circumstances of the road and allege that the road is opened in part. *Vacation of Public Road*, 69 P. L. J. 222.

Under the Act of June 13, 1836, P. L. 551, and the Act of May 3, 1855, P. L. 422, where the road was opened in part, the court of quarter sessions has jurisdiction to lay out a new road to take the place of the road which has been previously laid out and opened in whole or in part: *Whiteley Road*, 2 Mon. 194.

The petitioners need not ask for a view in the alternative. They may pray after either vacation or change separately, or the prayer may be in the alternative: *In re Road in McCandless Township*, 110 Pa. 605; *Limestone Township Road*, 67 Super. Ct. 105, aff. 44 Pa. C. C. 267.

Under this act a road is "opened in part" where a length of eighty-four feet and a width sufficient for ordinary travel is cleared and graded. A

road is "opened in part" if it is fit for travel in part, whether any travel goes over it or not: *Union Township Road*, 10 Pa. C. C. 433.

Under this act the petition to vacate a public road need not be signed by a majority of the original petitioners for the road. The petition should, in a clear and distinct manner, set forth the situation and other circumstances of the road and allege that the road is opened in part: *In re vacation of Public Road*, 69, P. L. J. 422; *In re Road in Dallas and Kingston Townships*, 7 Luz. L. R. 147.

In a proceeding to vacate and relay part of a road under this act it is not necessary, as in original opening of a road, that the petition mention the termini and no other points; but may follow the whole distance to be affected; *Road in Corington*, No. 2, 1 Wilcox 121.

This act does not apply to a road that has been laid out and opened entirely; *Cassville Road*, 21 Pa. C. C. 212.

The court has no authority to change or vacate a road, under this act, except by views and reviews: *Plainfield and Washington Township Road*, 56 Super. Ct. 479, rev. 14 North. C. R. 10.

1780. The powers of the courts of quarter sessions of this commonwealth to vacate public and private roads, are hereby extended to all roads, whether laid out by authority of law, or existing by prescription or lapse of time; and generally to all roads, except private roads, resting upon express grant, the evidence of which is still in existence, excepting in such counties, as the power to lay out and vacate public roads is, or may be, vested in some other tribunal, than in the court of quarter sessions of the peace; excepting, also, roads laid out by act of assembly, and are expressly exempted from the jurisdiction of said courts.

Sec. 1. Act of April 21, 1846, P. L. 416.

The provision in this act authorizing the courts of quarter sessions to vacate private roads "existing by prescription or lapse of time" is not unconstitutional: *Stuber's Road*, 28 Pa. 199; *Kricrs Private Road*, 73, Pa. 109.

This act prohibits the court from vacating private roads resting in express grant, the evidence of which is still in existence: *Vacation of Streets*, 17 Phila. 660, s. c. 1 Lanc. L. R. 270-222.

A petition to vacate, as useless, inconvenient and burdensome a part of "public road", particularly described, must aver that such "public road" was not laid out by act of assembly. The petition need not aver how the road became a public road: *Road in Salem Township*, 23 D. R. 140.

A petition to vacate a road must set forth how it became a public road in order to give the court jurisdiction: *Drumore Township Road*, 32 Pa. C. C. 105, s. c. 15 D. R. 625, 23 Lanc. L. R. 123.

Under this act the courts of quarter sessions have power to vacate public roads whether laid out by authority of law or existing by prescription or lapse of time and generally over all roads, except private roads, resting upon express grant, the evidence of which is still in existence. Where a petition avers that the road has been opened for a period of forty years, the court of quarter sessions has jurisdiction. It is clear that the road was opened long enough to be designated as a road "by prescription." The power to vacate follows from the express provision of the act: *In re Washington Road*, 72 Super. Ct. 461.

1781. The said courts, respectively, shall also have power, in the manner aforesaid, to change or supply by a new road, the route of any state road which may be laid out by direction of any act of assembly, within their respective counties, and thereupon to vacate so much of such state road as shall be supplied. Provided, That no change shall be allowed in any such road, which shall make the same of a greater ascent or descent than five degrees from a horizontal line.

Sec. 20, Act of June 13, 1836, P. L. 551.

Repealed by Sec. 46, Act of April 5, 1843, P. L. 156, as to state roads authorized by that act.

This section authorizes the courts only to change and supply state roads, not to vacate them wholly, and does not apply to unopened state roads: *State Road from Phoenixville to the Trappe*, 52 Pa. 162.

1782. The said courts, respectively, shall have power, in the manner aforesaid, to inquire of, and vacate any part of a state road within the respective county, which shall have been supplied and rendered useless by a substantial and permanent turnpike-road, made and completed according to law; but no stockholder in such turnpike-road shall in such case be a viewer or reviewer.

Sec. 21, Act of June 13, 1836, P. L. 551.

1783. Provided, That nothing in this act shall be construed to give authority to any of the courts of the commonwealth, to vacate any lane, street or highway within any city, borough, town plot, or any town or village laid out by the late proprietaries, or by any other person, and dedicated to the public use; nor to vacate any cartway laid out by the order of court, and not repairable at the charge of the public, nor shall such authority extend to any road, way or passage claimed by any person as a private right, nor to rivers or streams of water.

Sec. 22, Act of June 13, 1836, P. L. 551.

Where a private person lays out a plan of lots and streets, and sells lots with reference to said plan, the quarter sessions has no jurisdiction to decree the vacation of said streets: *Vacation of Streets*, 17 Phila. 660, s. e. 1 *Lanc. L. R.* 270.

1784. Every application to vacate any road as aforesaid, shall be in writing and signed by the applicants; it shall set forth in a clear and distinct manner, the situation and other circumstances of such road or highway, or of the part thereof which the applicants may desire to have vacated as aforesaid.

Sec. 23, Act of June 13, 1836, P. L. 551.

enough to be designated as a road "by prescription". The power to vacate section will be dismissed: *Blakely Road*, 8 Pa. C. C. 498.

Proceedings to vacate may be joined with proceedings to relay a road or parts of a road: *Road in Blakely, Dickson and Scott, 1 Lark J. 321, s. c. 4 Del. 233.*

Where the requirements of this section are neither complied with in the petition nor supplied by a report of viewers, the defect is fatal to the proceedings: *In re, Road in Lake and Dallas Township 12 Luz. L. R. R. 217.*

It is not necessary to state in the petition why the part desired to be vacated is inconvenient: *Manheim Township Road, 12 Super. Ct. 279.*

1785. Whenever the whole or any part of a road shall be changed or supplied, the same shall not be shut up or stopped, until the road laid out to supply the place thereof shall be actually opened and made.

Sec. 24, Act of June 13, 1836, P. L. 551.

A Provision in the report that the vacation shall take effect when an overhead bridge has been completed ready for use does not render the report conditional, but simply expresses what would follow as a consequence under this section: *Roads in Londonderry Township, 129 Pa. 244.*

Whenever the whole or any part of a road has been vacated by the court of quarter sessions and a new road laid out in lieu thereof, the road so vacated shall not be shut up until the new road shall have been actually opened: *Bridgeport and New Cumberland Turnpike Road, 171 Pa. 312.*

The necessity for closing an old road before the actual opening of a new one must be real and clearly proved, and the onus of so proving it is on him who closes it. The plain intent of the law is that the public shall have the use of a road, either the old or the new, all the time: *Mellick v. Railroad Co., 203 Pa. 457, rev. 17 Super. Ct. 12.*

1786. Whenever any public road—or turnpike, which, under existing laws, becomes a public road—is between two or more townships or on any division line between the same, in any county of this Commonwealth, has become useless, inconvenient, or burdensome, the court of quarter sessions of the county in which the said road is located shall have the authority, upon application to it by petition, signed by at least fifteen property owners of each of said townships, who are qualified electors therein, setting forth the facts, to inquire of and to change or vacate the whole or any part of said road, whenever the same shall have become useless, inconvenient, or burdensome; and the same court shall proceed therein, by views and viewers, in the manner provided for the laying out of roads and highways under existing laws.

Sec. 1, Act of June 7, 1907, P. L. 444.

This act supplements the Act of June 13, P. L. 551.

This section while primarily not township law, has been incorporated because the expense of laying out a new road under the act is imposed on the township. See *infra* Secs. 104 and 105.

A road which begins in one township and ends in another and does not occupy the division line, except where it bisects it, is not a public road between two or more townships as contemplated in this act: *In re Washington Road, 72 Super. Ct. 461.*

1787. The said court shall also have authority not only on said petition, to change or vacate the whole or any part of the said road which has become useless, inconvenient, or burdensome, but shall have authority also, whenever requested in and by said petition, to lay a new road, in the manner provided under existing laws, located in whole or in part in any one or more of the townships mentioned in the first section of this act; said new road to take the place of the said road which has become useless, inconvenient, or burdensome.

Sec. 2, Act of June 7, 1907, P. L. 444.

1788. Whenever a new road is laid out, under the provisions of this act, the costs and expenses of laying out, opening, and fitting the same for travel, as well as the damages sustained by the owner or owners of land taken for the same, or through whose land the same may pass, shall be borne or paid by the several townships mentioned in the first section of this act, in such just and equitable proportions as the said court of quarter sessions, upon report of three disinterested persons appointed by the said court to view and assess the same, shall fix and determine.

Sec. 3, Act of June 7, 1907, P. L. 444.

1789. The costs of all proceedings, under the provisions of this act, shall be paid by the township or townships mentioned in the first section of this act, as the court shall determine and direct.

Sec. 4, Act of June 7, 1907, P. L. 444.

1790. The board of viewers to be appointed under this act shall consist of three disinterested persons.

Sec. 5, Act of June 7, 1907, P. L. 444.

The viewers appointed under this section are appointed under the provisions of Sec. 5, Act of May 11, 1911, P. L. 1123.

1791. Where any street, lane, or alley laid out by any person or persons in any village or town plot, or in any plans of lots on lands owned or controlled by such person or persons, shall have been accepted as, or in any manner become, a public highway, and the said street, lane or alley, or any part thereof, has been or shall hereafter be duly and lawfully vacated as a public highway, and shall have been actually closed upon the ground, any action at law or equity by any person to enforce any right in said street, lane, or alley, so vacated, or easement in the ground embraced within the boundaries of the same, by reason of ownership of or interest in any lot or lots in said plan, or otherwise, shall be brought within five years after the vacation of said street, lane, or alley as a public highway and the closing of the same on the ground, and not thereafter: Provided,

That any person who would be sooner barred by this act shall not be thereby barred for one year from the approval thereof.

Sec. 1, Act of March 30, 1911, P. L. 30.

1792. From and after the expiration of a period of five years after the vacation of a street, lane, or alley, as mentioned in the preceding section, without the bringing of any such action as in said section mentioned, the designation of said street, lane, or alley, upon said plan shall have no force or effect, and all easements in the ground covered by said street, of every nature and kind whatsoever, and either public or private, shall cease and determine.

Sec. 2, Act of March 30, 1911, P. L. 30.

1793. Upon the petition of the county commissioners of any county, the court of quarter sessions of the county, with the approval thereof by the grand jury, may vacate as a county road any portion or portions of any road the permanent improvement whereof has been ordered, and made in whole or in part, under the provisions of an act of assembly approved June twenty-sixth, one thousand eight hundred and ninety-five, and entitled "An act, providing for the permanent improvement of certain public roads or highways in the several counties of this commonwealth, making said improved roads and highways county roads, authorizing the relocation, opening, widening, straightening, extending and alteration of the same, and the vacation of so much of any road as may thereby become unnecessary; authorizing the taking of property for such improvement, and providing for the compensation therefor and damages resulting from such taking; providing for the payment of the costs and expenses incurred in making such improvements, and thereafter repairing and maintaining said road, and authorizing the levy of a tax to provide a fund for said purposes.

Sec. 1, Act of May 1, 1901, P. L. 110.

1794. All portions of such roads, so vacated, shall become and be township roads.

Sec. 2, Act of May 1, 1901, P. L. 110.

1795. Whenever viewers are appointed to vacate any public road, street, or highway in this commonwealth, and the vacation of the same takes no land from the owner or owners of land abutting thereon, if, in the opinion of the viewers so appointed the vacation of said road, street, or highway damages the property of the abutting owner, they may award damages to such owner or owners as though land had been actually taken and such damages shall be paid as is now

provided by existing laws where land is actually taken for the opening, vacating, and laying out of roads, streets, and highways.

Sec. 1, Act of June 27, 1913, P. L. 633.

For provisions relating to the payment of damages where land is actually taken for the opening, vacating and laying out of roads, streets and highways see Secs. 1740-1745

This act does not change the existing law as to who is liable for the damages for the opening and vacating of public roads. Damages for opening a road in a township of the second class are properly assessed against the county: *Road in Fulton Township*, 23 D. R. 678, s. c. 31 Lanc. L. R. 134; 28 York 94,

This act does not authorize the collection of damages from the Commonwealth for diverting a part of a state highway from its original course. Such a diversion does not constitute a vacation: *Sager v. Commonwealth*, 258 Pa. 239, aff. 45 Pa. C. C. 452.

When the viewers made no effort to adjust the damages resulting to abutting property owners, and made no reference in their report relative thereto, an exception to their report on that ground will be sustained: *Liberty Township Road*, 46 Pa. C. C. 376, s. c. 28 D. R. 98.

If the provisions of the act can be fairly construed to impose liability on the county for the vacation of a township road, then the act is clearly unconstitutional by reason of its defective title: *Wright v. Luzerne Co.* 67 Supcr. Ct. 618

(f) Altering and Widening Township Roads Connecting Municipal Corporations or Parts Thereof.

1796. In all cases where public roads, or parts thereof, in townships of this Commonwealth, connecting a city with a city, a city with a borough, or a borough with a borough, or connecting one part of a city with another part of the same city, shall have become inconvenient and burdensome, and shall require altering and widening, or either altering or widening, to meet the requirements of public travel thereon, it shall be lawful for the court of quarter sessions, by the same process now provided for opening and laying out public roads, to alter and widen, or either alter or widen, such roads, vacating such part or parts of the said old roads as are rendered useless by such alteration: Provided, That upon a petition, the width of the road so widened shall be fixed by the court, on recommendation of the viewers, and damages, taking into account benefits conferred, shall be awarded and paid according to the provisions of the act of June thirteenth, one thousand eight hundred and thirty-six, (P. L. 551), and its supplements: Provided further, That, in addition to the powers conferred upon the viewers by this act, they are hereby authorized and shall assess the cost of such widening and altering, or either widening or altering, of such road to the respective cities and boroughs, or city and borough and townships, or township, as the case may be, in such proportion as to them may seem equitable and just, taking into consideration benefits derived by such widening

and altering, or either widening or altering, to the cities or borough, or city and borough and townships, or township, connected by and through which said such road may pass; and in case such widening or altering, or either, is made necessary in part by the use of such road by a corporation, or corporations, then the viewers shall have further power to assess such corporation, or corporations, such part of the cost of widening and altering, or either, as the viewers may agree is just and reasonable.

Sec. 1, Act of June 1, 1907, P. L. 372.

This act amends section 1, Act of April 3, 1903, P. L. 137.

This act does not repeal local or special laws. Loyalsock Twp. road, 26 Super. Ct. 219. This case also contains dictum as to the unconstitutionality of this act.

(g) Alteration, Relocation and Vacation of Roads Leading to Parks and Public Grounds, Vested in the State.

1797. Whenever a public road or highway within a park or public ground, title to which park or public grounds is vested in the State of Pennsylvania, is laid out, located, relocated, altered, or vacated, in such manner that a public road or highway, approaching, leading into, or contiguous to such park or public grounds, shall become either useless, inconvenient, or burdensome, such public road or highway, approaching, leading into, or contiguous to such park or public grounds, may be altered, relocated, or vacated, by the township supervisors or other officials charged with the duty of maintaining such roads or highways, in whole or in part, for the purpose of making it convenient and suitable as an approach to the roads and highways within said park or public grounds, upon the consent and agreement of: (a) the commissioners or officials charged with the care and management of said park or public grounds; (b) the township supervisors, or other officials charged with the duty of maintaining said roads or highways, approaching, leading into, or contiguous to said park or public grounds; and (c) the property owners owning the majority of the frontage of land abutting upon the relocated portion of the roads or highway, approaching, leading into, or contiguous to said park or public grounds.

Sec. 1, Act of May 1, 1919, P. L. 93.

1798. The filing of the consent and agreement of commissioners or officials charged with the care and management, of such park or public grounds, the township supervisors or officials charged with the maintenance of said roads and highways, and of the property owners, provided for in section one of this act, in the court of quarter sessions of the county or counties in which the altered, relocated, or

vacated road or highway is situated, shall have the same force and effect as the filing and the approval and absolute confirmation by the court of quarter sessions of a report of viewers appointed in accordance with the general road law, and shall have the same force and effect as though said viewers had laid out, located, relocated, altered, or vacated such road or highway in accordance with the agreement filed as aforesaid, and the report of said viewers had been filed, approved and absolutely confirmed by the court.

Sec. 2, Act of May 1, 1919, P. L. 93.

1799. The filing of said agreement to the court of quarter sessions shall be conclusive as to the question of the necessity for the laying out, location, relocation, alteration, or vacation of said roads or highways, as contained in the said agreement, and as to whether the said roads or highways, as laid out, located, relocated, altered, or vacated, are useless, inconvenient, and burdensome.

Sec. 3, Act of May 1, 1919, P. L. 93.

1800. Such road or highway, when altered or relocated, shall be maintained and repaired in the same manner as other township roads are maintained and repaired.

Sec. 4, Act of May 1, 1919, P. L. 93.

1801. The owner of any land through which any public road or highway may be relocated as provided for in the provisions of this act, may apply by petition to the court of quarter sessions of the proper county, setting forth the injury which he or she may have sustained by reason of the relocation of the said public road or highway, and the proceedings relative to the assessment and payment of damages of said land owner shall be in accordance with the provisions of the existing general road laws.

Sec. 5, Act of May 1, 1919, P. L. 93.

(h) County Commissioners Authorized to Locate, Lay Out, Straighten, Widen, Extend, Alter, Open, Vacate, and Repair Certain Township Roads.

1802. That the several counties of the Commonwealth shall have the power, and they are hereby authorized, whenever the commissioners or a majority of them shall, by resolution duly adopted, deem it expedient so to do, and upon approval thereof by a grand jury and by the court of quarter sessions, as hereinafter provided, for the purpose of providing public roads, specially constructed and improved, shall have the power to take exclusive control of and improve any

public road or highway, or section thereof, located either wholly or in part in any borough or township, within their respective limits, whether existing by their authority or laid out in whole or in part by virtue of this act, or otherwise; and for that purpose they are hereby authorized and empowered to originally locate, lay out, establish, in whole or in part, relocate, straighten, widen, extend, alter, and open, public roads and highways, and to construct and improve the same, and to vacate so much of any roads as may be thereby rendered unnecessary and useless, in the manner and by the procedure hereinafter provided; but any road or highway as established or altered, constructed and improved, under the provisions of this act, shall, by ordinance enacted by the borough councils of the borough or several boroughs, or by resolution adopted by the supervisors of the township or several townships, through which such road shall pass, become borough or township roads; and the duty of maintaining and keeping the same in repair shall devolve upon the proper township or borough through or into which the same extends: Provided, That no applications under this act shall be permitted by the court of quarter sessions of any county, until the commissioners of such county shall have fulfilled the following conditions:—

Any board of county commissioners which desires the benefits of this statute shall cause to be laid out, surveyed, and adopted, as hereinafter provided, a system of main thoroughfares, which said board shall adjudge the proper roads to be established and specially constructed and improved in accordance with this act, as now amended. In adopting a system, the commissioners shall consider the population and needs of all parts of the county, and make an equitable distribution of the roads to be specially constructed, located, and improved by the said county. They shall cause a plan or plans to be made showing said system of proposed roads, the relation of the proposed roads to existing public roads which connect therewith or are to be supplied thereby, the names of abutting property owners, and also all roads which have been improved under the said acts hereby amended. Upon approval of said plan or plans, by a resolution duly adopted by the commissioners, they shall cause said resolution to be engrossed upon said plans, and certified over the signature of a majority. Said plans shall be filed for public inspection in the office of the commissioners, and recorded in the office of the recorder of deeds, in a book to be provided for the purpose. After the adoption and recording of said plans, all applications under this act to the court of quarter sessions shall be restricted and relate to the establishing, opening, construction, and improvement of the proposed roads of said system, or parts thereof, and the vacation of roads supplied by the portions opened and improved: Provided,

That the commissioners, upon approval by a grand jury and the court of quarter sessions, as hereinafter provided, are empowered to relocate, straighten, widen, extend, alter, and open, construct and improve, the proposed public roads, as laid out, surveyed, marked, and shown upon said plans of said system; or to originally locate, lay out, and establish, construct and improve public roads which substantially supply said system or parts thereof, or which, although not parts of said system, are deemed by the said grand jury and court to be main thoroughfares of sufficient importance to be improved by the county, and to be added to said plan; and, in such case, to vacate so much of the roads of said system, and of public roads already established, as may be rendered unnecessary by the changes or by entirely new location: Provided also, That no part of the proposed roads of said system shall, as such, be an easement upon private property, or in any manner interfere with the use thereof, until established as a public road by the action of the grand jury and the court of quarter sessions: Provided also, That the commissioners, subject to the approval of a grand jury and the court of quarter sessions, as hereinafter provided, may originally locate, lay out, and establish, in whole or in part, relocate, straighten, widen, extend, alter, and open, construct and improve public roads, not parts of said system nor deemed main thoroughfares, upon parties interested therein paying or securing to be paid, in a manner to be approved by the court of quarter sessions, such proportion of the cost of the original construction and improvement as the commissioners may deem just, which shall not be less than one-fourth of such cost in any case: Provided also, That in any county, where no work has been done in the improvement of its roads hereunder, prior to April first, one thousand nine hundred and five, the commissioners of said county shall not be required to adopt and file the plans, aforesaid, until the expiration of a period of two years from and after the commencement of the improvement of the roads of said county, as aforesaid.

Sec. 1, Act of June 26, 1895, P. L. 336, as amended by Act of May 13, 1909, P. L. 527.

This act has the effect of imposing liability on the county for injuries occasioned by breach of the county's duty to repair roads improved and taken over under its provisions: *McCormick v. Allegheny County*, 263 Pa. 146; *Clark v. Allegheny County*, 260 Pa. 199.

1803. The several counties of this Commonwealth shall have the power, and they are hereby authorized, whenever the county commissioners or a majority of them shall resolve so to do, and upon the approval thereof by a grand jury and by the court of quarter sessions, in the manner hereinafter provided, for the purpose of

providing public roads, specially constructed, improved, and maintained, to make, construct, and maintain public roads or highways as county roads within their respective limits; and, to that end, to originally lay out and open any public road or highway, and to take possession of, and exercise control over, any existing township road or highway, or part thereof, and, either at the time of and in connection with the original improvement of such road or at any time thereafter, to straighten, widen, extend, and alter any such road or part thereof, and to vacate so much of any such road or part thereof as may become unnecessary and useless; and any road or highway so taken over or improved under the provisions of this act shall thereupon become a county road; and it shall be the duty of such county to keep and maintain such road in repair, whether improved under this or former acts of Assembly, the expense thereof to be paid by such county in the manner hereinafter provided.

Sec. 1, Act of May 11, 1911, P. L. 244, as amended by Sec. 1, Act of July 12, 1919, P. L. 738.

This act has the effect of imposing liability on the county for injuries occasioned by breach of the county's duty to repair roads improved and taken over under its provisions: *McCormick v. Allegheny County*, 263 Pa. 146; *Clark v. Allegheny County*, 260 Pa. 199.

An order to vacate as a county road part of a turnpike which was abandoned as a turnpike and has been maintained as a county road, will not be refused on the ground that it would be prejudicial to the right of the township and no notice of the application was given to the supervisors: *Vacation of county Road, formerly the Maytown and Marietta Turnpike*, 37 Lanc. L. R. 475.

1804. All such roads and highways, and all parts thereof, originally constructed and improved in accordance with the provisions of this act, shall be deemed, taken, and treated as, and become, public highways of the said county, and shall be subject to the control and supervision of the proper county commissioners; and it shall be the duty of said several counties to keep, maintain and repair the same whenever and as often as it shall be found necessary; and all road supervisors, authorities, persons, or townships, heretofore required to maintain and keep in repair such roads or parts thereof, shall thereupon and thereafter cease to have any management of or control over said roads or any part thereof; and such supervisors, authorities and townships are hereby relieved from all duty and responsibility in and about the care, maintenance, and repair of all roads improved under this act and of former acts, and becoming county roads; and all other public roads shall continue under the control of the proper local authorities, and shall be opened, repaired, and maintained under the laws now in force in the respective townships of the several counties of this Commonwealth.

Sec. 19. Act of May 11, 1911, P. L. 244.

1805. Upon petition of the county commissioners of any county, the court of quarter sessions of the county, with the approval thereof by the grand jury, may vacate as a county road any portion or portions of any abandoned or condemned turnpike road or of any road the permanent location or improvement whereof has been ordered or made under this or former acts relating to county roads, and all portions of such roads so vacated shall become and be township roads.

Sec. 20, Act of May 11, 1911, P. L. 244, as amended by Sec. 2, Act of July 8, 1919, P. L. 106.

1806. Any county of this Commonwealth may appropriate and expend moneys and incur such indebtedness and issue bonds or other obligations therefor, as may be necessary to pay for the improvement and maintenance of any State highway or State-aid highway or any public highway within its proper limits: Provided, however, That no improvement can be made to any State highways or State-aid highways until the same has been submitted to and approved by the State Highway Department: And provided further, That no county shall appropriate and expend any of such moneys for the improvement and maintenance of any public highway, other than a State highway or State-aid highway or county road, where the highway is to be improved jointly by the township or borough and county, until and unless the supervisors or commissioners of the township or borough council of the borough in which the highway proposed to be improved lies shall first petition the county commissioners of the county, representing that any highway or section thereof, lying within such township or borough, on which it is proposed that said money shall be expended, is in need of reconstruction or repair, and particularly describing said highway, and until and unless the said application has been submitted to and approved by the State Highway Department; And provided further, That when the improvement and maintenance of any public highway in the county is desired by the county without the intervention of the township or borough, the commissioners of said county may make application for approval direct to the State Highway Department.

Sec. 1, Act of June 12, 1919, P. L. 450, as amended by Act of March 10, 1921, P. L. 26.

(i) County to Erect Barriers on Roads at Dangerous Places.

1807. When a road or highway runs along the edge of a precipice, along which it may be necessary to erect guards or barriers for the proper protection of the travelling public, and the erecting of such guards or barriers requires more expenses than it is reasonable

the township should bear, the court having jurisdiction shall, on the representation of the supervisors, or on the petition of any of the inhabitants of such township, order a view, in the manner provided for in the case of roads; and if, on the report of viewers, it shall appear to the court, grand jury and commissioners of the county, that such guards or barriers are necessary, and would be too expensive for such township, the same shall be erected and maintained as county bridges are now erected; and the provisions of this act shall apply to roads already opened, as well as those hereafter opened.

Act of May 25, 1878, P. L. 150.

(j) County and Township to Pay One-Half of the Cost of Improvement of Roads Forming Dividing Line Between City and Township Located in Another County.

1808. Whenever the centre line of any highway constitutes a dividing line between a city and a township located in an adjacent county, it shall be lawful for the commissioners of the county and for the commissioners or township supervisors of such township, as the case may be, to enter into a contract with the city providing for the grading, curbing, macadamizing, or paving of the roadway of said highway, the cost thereof to be borne one-half by the city, and one-half by the township and the county in which such township shall be situated in equal portions.

Sec. 1, Act of June 20, 1919, P. L. 513.

1809. The said alteration or improvement shall be constructed, and subsequent repairs shall be made, under the supervision of the proper authorities of the said city, in compliance with existing laws governing such construction or improvement of such city, and in further compliance with plans and specifications to be agreed upon in writing between such city and the commissioners of the county and the commissioners or township supervisors of the said township. The cost of repairs shall be borne one-half by the city, and one-half by the township or by the county and township in equal portions or such other proportion as may be agreed upon by the county and township.

Sec. 2, Act of June 20, 1919, P. L. 513.

1810. In all cases in which it shall be found impossible to enter into such contract or agreement as is provided for by the first section of this act, or where either the city or the township or the county in which such township is situated shall refuse to enter into such contract or agreement, it shall be lawful for either the city or the county or township to present its petition to the court of com-

mon pleas of either county, setting forth the facts and circumstances, including the condition of the highway from which the necessity or desirability for the grading, curbing, macadamizing, or paving of the roadway appears, and the estimated cost thereof, and that the terms of the said contract as provided for in section one cannot be agreed upon by the said city and the county or township, or either or any of them, or that either such city or the county or township, or any or either of them, refuses to enter into such contract. Such petition may pray that such court may, after hearing all the parties concerned, make its order or decree, defining the nature and character of the improvement reasonably necessary or desirable to be made to the roadway, and requiring the parties hereinabove specified to enter into a contract or contracts for the making and constructing of the same as herein provided for. A copy of the said petition, duly certified, shall be served upon the city or the county and township concerned, other than the petitioner, with notice of such day as may be fixed by the court for the hearing. Thereupon either or both of the parties served with such notice shall be entitled, on or before such date, to file in the said court its answer to the said petition, setting forth its version of the facts or such other matters in relation thereto as may be deemed necessary or proper by it. The said court, upon the date so fixed or at such other time as it may appoint, shall hear the evidence of the parties, or it may refer the matter to a master, who shall hear the testimony of the parties and report his findings, in the same manner and under the same procedure as provided by the rules in equity in similar cases to the said court, which may reject, confirm, or modify the same, and may make its decree or order directing the making of such alterations or improvements to the roadway as may be deemed reasonably necessary or desirable, and providing for the sharing of the cost of such improvements, one-half by the city, and one-half by the county and township in equal portions. The said order or decree may further provide that the repairs of such alterations and improvements subsequently required shall be borne one-half by the city, and one-half by the county or township in equal portions or such other proportions as between the county and the township as such court may find to be legal and proper; and thereupon the said grading, curbing, macadamizing, or paving of the roadway of such highway shall proceed in accordance with the decree or order of the said court in the same manner as if the contract or agreement provided for in the first section of this act had been entered into and duly executed.

(k) Townships Authorized to Assist Counties in the Construction and Maintenance of County Highways.

1811. The proper authorities of any borough or township or any incorporated town of this Commonwealth, be, and are hereby, authorized to enter into a contract or contracts with the commissioners of any county in this Commonwealth, providing that the said county commissioners shall construct an improved highway or highways under the provisions of the act to which this is a supplement, and the expense or cost of said construction shall be borne jointly by the said borough, township, or incorporated town and the said county, in such ratio or proportions as may be agreed on in said contract or contracts.

Sec. 1, Act of May 24, 1917, P. L. 291, supplementing Act of May 11, 1911, P. L. 244.

1812. Payment for the construction of said highway or highways, as provided for in section one of this supplement, shall be made by the county, which shall be reimbursed by the said borough, township, or incorporated towns, in such sums as agreed upon in said contract or contracts, upon presentation to them, from time to time, of estimates and bills for work already performed and paid for under the provisions of the act to which this is a supplement.

Sec. 2, Act of May 24, 1917, P. L. 291, supplementing Act of May 11, 1911, P. L. 244.

1813. The several boroughs, townships, or incorporated towns, in this Commonwealth, who shall enter into a contract or contracts with the county commissioners of their respective counties for the joint construction of improved highways under the provisions of this supplement, are hereby authorized to incur such indebtedness, and issue interest bearing bonds therefor, as may be necessary to pay their proper share of said costs of construction as agreed in said contract or contracts; subject however, to the constitutional limitations of such indebtedness.

Sec. 3, Act of May 24, 1917, P. L. 291 supplementing Act of May 11, 1911, P. L. 244.

1814. Any highway constructed jointly, under the provisions of this supplement, shall be repaired and maintained at the expense of the proper county; but nothing shall prevent the proper authorities of a borough, township, or incorporated town from entering into a contract or contracts with the county commissioners of the proper county for the maintenance of said improved highway, under such terms and conditions as may be mutually satisfactory.

Sec. 4, Act of May 24, 1917, P. L. 291, supplementing Act of May 11, 1911, P. L. 244.

(1) Turnpikes, Planks Roads, and Toll Bridges.

1815. The several supervisors of the public highways of their respective townships in this Commonwealth are hereby severally authorized and empowered to subscribe for so much capital stock in such turnpike companies, who have constructed, or may hereafter locate and construct, any such turnpike road through such township, as may be agreed upon by the tax-payers of said respective townships.

Sec. 7, Act of April 5, 1842, P. L. 230.

This act does not seem to be repealed by Art. IX. Section 7 of the Constitution prohibiting the General Assembly from authorizing inter alia any township to pledge or loan its credit to any corporation, etc. See *Indiana Co. v. Agricultural Society*, 85 Pa. 357.

1816. Where any such turnpike as aforesaid may now pass, or hereafter be constructed, or that when any turnpike company may contemplate to make a turnpike road through any of such townships, it shall be the duty of the respective supervisors of such townships, as often as may be required by request made in writing by at least twelve tax-payers of said township, to cause public notice to be given on a day therein mentioned, by at least six printed or written advertisements, affixed at as many of the most noted places in said township, at least one week before said day, that an election will be held on said day, at the usual place where the township elections are held, to elect township officers; said election to be opened between the hours of one and two o'clock of that day by said supervisors, to be assisted by two qualified citizens, chosen by such citizens qualified to vote as shall then be present, who shall be judges of said election; and such citizens of said township qualified to vote at a general election shall, between the hours of one and six o'clock of that day, decide by ballot for or against accepting the provisions of this act, and at the same time decide by ballot the amount of stock to be subscribed for on behalf of said township; the acceptance and the non acceptance of this act, and the amount of stock to be subscribed for, shall be governed by the majority of votes at any such election, and the said judges and supervisors shall make duplicate returns under their hands of all such elections, one to be retained by the supervisors, and the other delivered to the president of such turnpike company, who may have constructed, or about to construct such turnpike through said township, and if there should be a majority of votes at any such election in favor of accepting the provisions of this act, it shall be the duty of the supervisors of such townships on behalf of the citizens thereof, to subscribe for so much capital stock in such turnpike company as may have been agreed upon at such election, and shall assess such an amount of tax on the citizens of such township as may be

requisite for the disbursement of the same, to be assessed and collected in such manner as is provided for taxes to be levied and collected to keep the public highways in repair; and it shall be the duty of the several supervisors of such townships to receive all dividends and emoluments arising on such stock, and apply the same towards keeping the public highways in such township in repair, and such supervisors shall receive such compensation for their services, that they may be entitled to receive for like services in said township.

Sec. 8, Act of April 5, 1842, P. L. 230.

1817. Where a turnpike, toll-road or toll-bridge company, or other private corporation, shall own or control the whole or any part of a road, route or bridge forming all or any portion of a State Highway, as hereinbefore described and defined, it shall be the duty of the State Highway Commissioner, for and in behalf of the Commonwealth, by amicable agreement, to purchase said turnpike, toll-road or such part thereof, or toll-bridge, owned by such company or corporation; and if a fair and reasonable price, which shall be approved by the Governor, for said road or part thereof, or toll-bridge, cannot be agreed upon, it shall then be lawful for the State Highway Commissioner to petition the court of quarter sessions of the county in which the State highway, or any part thereof, owned or controlled by said turnpike company, bridge company, or other private corporation, is located, setting forth that such turnpike or toll-road or part thereof, or toll-bridge, is a State highway, within the designation and description of this act, and that no agreement as to price or damage can be reached; and thereupon said court shall appoint a jury of viewers, consisting of five reputable citizens of the county in which the road or part thereof, or toll-bridge, is located; and the said jury, having been sworn or affirmed to perform their duties faithfully, justly and impartially, shall, after due notice to the company or corporation and the State Highway Commissioner, view and condemn the said turnpike, toll-road or highway or part thereof, or toll-bridge, as a State highway, or part thereof, and shall appraise and report the damages which the owner or owners shall be entitled to receive therefor. And for the purpose of appraising the damages, as aforesaid, the said jury shall first hear evidence on the part of the said owner or owners, and afterwards shall hear evidence on the part of the State Highway Commissioner; after which, evidence shall be heard in rebuttal and in sur-rebuttal as prescribed for trials at law. Said report shall be presented for confirmation nisi at the term of said court next succeeding said appraisalment and view, unless by order of said court the same be continued to a later term; and if no exceptions are filed thereto said report shall, at the expiration of thirty days after confirmation, nisi, be confirmed absolutely; and, an appeal

therefrom by the Commonwealth or the company or corporation shall lie to the court of common pleas of said county, within thirty days after confirmation absolute; and upon issue framed by the court of common pleas, the damages shall then be ascertained as in similar cases, subject to an appeal to the Superior or Supreme courts, as the case may be. The said court of quarter sessions may, in its discretion, appoint a competent stenographer to keep a faithful record of all proceedings before the viewers, and to furnish a full copy of his notes to be attached to and form a part of the record. And the said stenographer shall be allowed the same compensation as that paid in their respective county to court stenographers; and each viewer shall be allowed the sum of two dollars and fifty cents for each day necessarily employed which together with the compensation allowed the said stenographer, shall be taxed as part of the costs of the proceeding and be paid as hereinafter provided. Immediately upon agreement reached, or upon completion of any court proceedings and acceptance of the appraisal or verdict by the Commissioner, the damages so determined or awarded shall be paid by the Commonwealth, together with the costs and expense of proceedings in condemnation, and the said turnpike, toll-road or part thereof, or toll-bridge, shall become a State highway, or part thereof, free from tolls: Provided, That if the amount of damages as finally awarded shall be deemed excessive by the State Highway Commissioner, he may refuse to accept the appraisal or verdict, and may then omit said turnpike or toll-road, or part thereof, or toll-bridge, from the afore-said route of State highway, and all court costs, and costs of jury proceedings, shall thereupon be paid by the State Highway Department; and, by necessary divergence therefrom, he may select and adopt the next best and most suitable and convenient route or road, in order to connect up and complete a continuous State highway; and thereafter such diverged route or road shall be taken and remain and be as much a part of the State highways of the Commonwealth as though otherwise particularly described in this act: Provided further, That at any time during the proceedings in condemnation, after the filing of the original petition of the State Highway Commissioner, the said State Highway Commissioner, with the consent and approval of the Governor, may, after ten days' written notice to the owner or owners of said turnpike, toll-road, highway, or toll-bridge, present to the said court of quarter sessions of the proper county a declaration of his intention to immediately enter upon and take the said turnpike, toll-road or part thereof, or toll-bridge, and to pay or cause to be paid to the said owner or owners such amount of damages as shall be assessed in the manner provided for by this act, and all costs and expense of the said proceedings; which declaration

shall contain a certificate of State Highway Commissioner that sufficient funds to pay all possible damages, costs, and expenses of said proceedings have been appropriated by the Legislature and are available for this specific purpose; and, upon presentation of said declaration, the said court shall mark the same filed of record in said proceedings; whereupon the funds in the hands of the State Highway Commissioner, or in the State Treasury and specifically appropriated to the use of the State Highway Commissioner, shall be pledged and deemed as security for all damages done or suffered, or which shall accrue, by reason of the taking of said turnpike, toll-road, or part thereof, or toll-bridge; and the said turnpike, toll-road, or a part thereof, or toll-bridge, shall immediately become a State highway, or part thereof, free from tolls, and the same may then be improved and maintained by the State Highway Commissioner in the manner provided by this act; and, upon completion of the proceedings in condemnation, the State Highway Commissioner shall accept the appraisalment and verdict, and the damages so determined or awarded shall be paid by the Commonwealth, together with the costs and expenses; and in case the said damages and costs and expenses are not paid within thirty days from the final adjudication and judgment thereon, the owner or owners of said turnpike, toll-road, highway, or toll-bridge, may enforce the same by payment of the same by writ of mandamus, which shall be issued by the court of common pleas of the county in which the seat of government is or may be located, and shall be proceeded in as provided by law: And provided further, That where an existing turnpike or toll-roads, or parts thereof, or toll-bridges, owned by turnpike or toll-bridge companies, or private corporations, shall be or form any part of any State highway, hereinbefore designated, described or defined, the same are not hereby immediately taken over for improvement or repair; but the purchase thereof shall be deferred by the State Highway Commissioner, and the same shall remain and be operated and controlled by the owners thereof as heretofore, until such time as the work of improvement of all other State highways and parts or portions thereof shall have been completed: And provided further, If, in the judgment of the State Highway Commissioner, local or special conditions of any of said turnpikes or toll-roads or any part or parts thereof, or toll-bridges, are such as tend to interfere with or inconvenience travel thereon, and shall sooner require the purchase, improvement, and control thereof by the State, then, upon the approval of the Governor, such turnpike or turnpikes, toll-road or toll-roads, or part or parts thereof, or toll-bridge or toll-bridges, so affected by such local or special conditions, shall be taken over in accordance with the provisions of this act: Provided, however, That the county or counties, in which any such toll-bridge or bridges is

located, shall pay at least one-half of the expense of freeing such toll bridge or bridges: And provided further, That, in taking over toll-roads, counties, townships, boroughs, or incorporated towns in which toll-roads to be taken over by the State Highway Commissioner are located, are hereby authorized to contribute such part of the purchase price of said road, or such part of the amount to be paid as ascertained and awarded by condemnation proceedings, as may be agreed upon between said county, township, borough or town officials and the State Highway Commissioner; And provided further, That nothing in this act shall in any way prohibit any county from paying in full the amount determined to be paid for any turnpike road, forming a portion of a State highway route, condemned by proceedings under any other act of Assembly now in force.

Sec. 9, Act of May 31, 1911, P. L. 468, as amended by Act of May 10, 1917, P. L. 184.

1818. When any turnpike, or part thereof, has been, or may hereafter be, appropriated or condemned for public use, free of tolls, under any existing laws, and the assessment of damages therefor, shall have been paid by the proper county; or when any turnpike company or association has heretofore abandoned or may hereafter abandon its turnpike, or any part thereof; or when any turnpike company or association, owning any turnpike, has heretofore been dissolved, or may hereafter be dissolved, by proceedings under any existing laws of this Commonwealth, such turnpike, or part thereof, shall be properly repaired and maintained at the expenses of the county, city, or borough in which the said turnpike, or part thereof, lies, or the same may be improved, under any existing laws, by the said county, city, or borough.

Sec. 1, Act of April 20, 1905, P. L. 237, as amended by Sec. 1, Act of April 25, 1907, P. L. 104.

This act relieves the township of the duty to maintain and repair a condemned or abandoned turnpike but it cannot make repairs to such road and collect the costs thereof from the county: *East Whiteland Township, v. Chester County*, 235 Pa. 579.

Declared constitutional: *Somerset Township Supervisors, v. County Commissioners*, 251 Pa. 164; *Manchester Township Supervisors v. Wayne County, Commissioners*, 257 Pa. 442; *Clarion County v. Clarion Township*, 222 Pa. 350.

1819. From and after the passage of this act, it shall be lawful for twenty-five or more resident taxpayers of any county in this Commonwealth in which any turnpike, road, or highway, heretofore or hereafter constructed, is wholly or partly located, and upon which tolls are charged the traveling public under any general or special law, to present their petition to the county commissioners of their county, setting forth that it would be for the best interests of the

people of their county that such turnpike, road, or highway, or part thereof, should be purchased by their county, and become a public road, free from toll and toll-gates; whereupon it shall be lawful for the county commissioners of the petitioners' county, upon behalf thereof, to enter into negotiations with the owners of said turnpike, road, or highway, or part thereof, for the purchase of the same, and, if the price therefor can be mutually agreed upon, it shall be paid by the said county commissioners out of any funds of their county not otherwise appropriated; and upon payment thereof, the said turnpike, road, or highway, or part thereof, shall become a public road, free from tolls and toll-gates: Provided, That if said county commissioners and the owners of said turnpike, road, or highway, or part thereof, can not agree upon the price to be paid for the same, nothing in this act contained shall prevent the petitioners or any other resident taxpayers of the county from proceeding to have such turnpike, road, or highway, or part thereof, condemned under existing laws, and made a public road, free from tolls and toll-gates, and the said road, as made or heretofore made free of tolls, either by negotiation or condemnation proceedings as aforesaid, shall be properly repaired and maintained at the expense of the county, city, or borough, in which the said turnpike, or part thereof, lies: Provided, That the portion of any turnpike or toll-road, which lies within a township, shall, if accepted by the board of supervisors or commissioners of the township in which the same or any part of the same is located, when signified in writing and filed in the office of the court of quarter sessions of the county in which said road is located, become a part of the road system of said township, and shall thereafter be maintained in the same manner as other roads legally laid out in said township: Provided further, That the provisions of this act shall not apply to any turnpike, road, or highway, or part thereof, which now forms or may hereafter form a part of the State highway system of this Commonwealth.

Sec. 1, Act of May 16, 1919, P. L. 199.

(m) State Highways.

1820. The highways designated in this act as State Highways shall be taken over by the State Highway Department from the several counties or townships of the State, and when so taken over shall thereafter be constructed, improved, and maintained by the State Highway Department, at the expense of the Commonwealth. Said

highways shall be taken over in whole or in part, from time to time, as circumstances and conditions will permit: Provided, That, all township roads, abandoned and condemned turnpikes, or turnpikes that may hereafter be abandoned or which may hereafter be condemned and paid for by the county in which the same may be located, and which form a part of any such highway, shall be taken over by the State Highway Department before the first day of June, one thousand nine hundred and twelve. The State Highway Commissioner shall, before taking over any highway under the provisions of this act, give notice in writing to the proper officers of the county or township in which said highway shall lie of his intention so to do, and of the date when the State Highway Department will assume the maintenance and care thereof. The work of maintenance, repair, and construction of said State Highways shall be commenced and carried on as equally and uniformly in the several counties as conditions will allow: Provided, That any county, township, or borough, or incorporated town which may have in contemplation, or under contract or construction, the improvement of any portion of any highway designated herein as a State Highway, shall, upon notice from the State Highway Commissioner of his intention to take over such highways as herein provided, immediately notify the State Highway Commissioner of their intention to make said improvements; and thereupon the status of such highway shall remain the same as it was previous to the passage of this act; and the county commissioners, or the commissioners or supervisors of the township, or councils of the borough or incorporated town, as the case may be, are authorized to complete the improvements of said highway at the expense of the county or township, or borough or town, as the case may be; or the same may be reconstructed as a State-aid highway as is hereinafter provided for: Provided, That upon the completion of any improvement aforesaid, or at the expiration of a period not exceeding eighteen months after the passage of this act, the said highway shall become a State Highway, as herein provided: And be it further provided, That where an agreement or contract exists between any street railway company, or other firm or corporation, and any county, township or borough, the terms of which require said street railway company, or other firm or corporation, to maintain any highway which is designated under this act as a State Highway, the said agreement shall remain in force, and the State shall succeed to and take over to itself all the rights of said county, township, or borough existing under said agreement or contract. The said street railway company, or other firm or corporation, shall be bound to carry out all of the requirements, and comply with all the terms and conditions, of said agreement with the State, the same as though the said

contract or agreement had been originally made between the State and said street railway company or other firm or corporation.

Sec. 5, Act of May 31, 1911, P. L. 468.

Where the State Highway Department takes over a township road under this section and it becomes a state highway, the State is entitled to receive from a traction company moneys payable by the traction company to the township for the repair and maintenance of the road, and can recover from the township with interest such payments as the township may have received since the State took over the road and its maintenance: *Commonwealth v. Newton Township*, 29 D. R. 1942.

1821. From and after the adoption of this act, all those certain existing public roads, highways, turnpikes, and toll-roads, or any parts or portions thereof, subject to the provisions hereinafter made in the case of turnpikes and toll-roads, forming and being main traveled roads or routes between the county-seats of the several counties of the Commonwealth, and main traveled roads or routes leading to the State line, and between principal cities, boroughs, and towns, shall be known, marked, built, rebuilt, constructed, repaired, and maintained by and at the sole expense of the Commonwealth; and shall be under the exclusive authority and jurisdiction of the State Highway Department, and shall constitute a system of State Highways, the same being more particularly described and defined as follows:—(Here follows a description of the various routes making up the State Highway System.)

Sec. 6, Act of May 31, 1911, P. L. 468.

This section does not violate that part of the Constitution which provides that "the general assembly shall not have any local or special law *** authorizing the laying out, opening, altering, or maintaining roads, highways, streets or alleys": *State Highway Commissioner v. Chambersburg & Bedford Turnpike Co.*, 242 Pa. 171.

1822. The State Highway Commissioner may, at his discretion, enter into a contract with any person, firm, or corporation, or the authorities of any borough or incorporated town, or the commissioners of any county, or the supervisors or commissioners of any township, to repair and maintain any highway designated in this act as a State Highway, or any portion thereof.

Sec. 12, Act of May 31, 1911, P. L. 468.

1823. The State Highway Commissioner is hereby authorized to make and enter into contracts for the reconstruction or improvement of any section of a State highway for which an application has been, or which may hereafter be, made by any county, township, borough, or incorporated town, or by any county and township, county and borough, or county and incorporated town, asking that such section of State highway be reconstructed or improved in the same manner as a State-aid highway; and agreeing to pay its or their respective

share of the total cost of said reconstruction or improvement as provided for in section twenty-two of the act to which this is a supplement, or upon such other terms and conditions as to the sharing of the total cost of said reconstruction or improvement as may be agreed upon between the State Highway Commissioner and any such county, township, borough, or incorporated town or between the State Highway Commissioner and any such county and township, county and borough, or county and incorporated town; but, otherwise, as provided in section twenty-two of the act to which this is a supplement: Provided, That the State Highway Commissioner shall not enter into any agreement with any borough of this Commonwealth for the building or as to the sharing of the total cost of the reconstruction or improvement of any section of State Highway within said borough until such borough shall lay all necessary pipes and make all necessary connections for sewerage, water, gas, heating, lighting, and any other purpose whatsoever, where the duty to lay such pipes and make such connections is imposed upon the borough by law, and shall, by ordinance duly passed by the borough council and approved by the burgess, compel all public service companies and abutting property owners to lay all necessary pipes and make all necessary connections for sewerage, water, gas, heating, lighting, or any other purposes whatsoever, along and in the line of said section of State highway, before the work of reconstruction or improving same is started: And provided further, That said section of State highway shall not be torn up or opened for any purpose whatsoever by the borough or any public service company or companies or abutting property owners or any other person or persons, within a period of five years from the time the reconstruction or improvement of said section of State highway is completed, except in case of unavoidable accident, and, in the event that said section of State highway shall be torn up or opened on account of an unavoidable accident, the borough shall notify the State Highway Commissioner of such opening, and the same shall immediately be reconstructed and repaired at the expense of the said borough under the supervision of the State Highway Commissioner or his duly authorized agent or representative and according to the standards of the State Highway Department. In the event that the said borough fails or refuses to reconstruct or repair said section of State highway, the same shall be reconstructed or repaired by the State Highway Commissioner, and the cost thereof collected from said borough.

Sec. 1. Act of May 17, 1917, P. L. 235, as amended by Act of June 5, 1919, P. L. 395.

1824. The several counties, townships, boroughs, or incorporated towns in the Commonwealth that have made, or which may hereafter

make, several or joint applications for the reconstruction of a State highway or any portion thereof as a State-aid highway, are hereby authorized to incur such indebtedness in the proportions agreed upon, as aforesaid, and to pay their respective shares of the cost thereof, as provided for in the act to which this is a supplement; and all such contracts heretofore entered into are hereby made valid.

Sec. 2, Act of May 17, 1917, P. L. 235.

1825. All work authorized under this supplement shall be done under contract, as provided for and set forth in the act to which this is a supplement, and the section or sections of State highway so reconstructed or improved shall be and remain a State highway.

Sec. 3, Act of May 17, 1917, P. L. 235.

1826. The State Highway Commissioner is hereby authorized to make and enter into contracts for the reconstruction or improvement of any section of a State highway for which an application has been, or which may hereafter be, made, by any county, township, borough, or incorporated town, or by any county and township, county and borough, or county and incorporated town, asking that such section of State Highway be reconstructed or improved in the same manner as a State-aid highway; and agreeing to pay its or their respective share of the total cost of said reconstruction or improvement, as provided for in section twenty-two of the act to which this is a supplement, or upon such other terms and conditions as to the sharing of the total cost of said reconstruction or improvement as may be agreed upon between the State Highway Commissioner and any such county, township, borough, or incorporated town, or between the State Highway Commissioner and any such county and township, county and borough, or county and incorporated town, but otherwise, as provided in section twenty-two of the act to which this is a supplement.

In the construction or improvement of any such State highway in any borough, town or township, in the same manner as a State-aid highway, the State Highway Department may use funds now appropriated, or that may hereafter be appropriated, either for State highway or State-aid highway purposes.

Sec. 1, Act of June 5, 1913, P. L. 417, as amended by Sec. 1, Act of March 20, 1917, P. L. 6.

The State Highway Department is not permitted to reconstruct or improve as a State-aid highway any section of a State highway route lying within the limits of a borough. If a section of a State highway within a borough has been reconstructed in the same manner as a State-aid highway under this section, the State Highway Department and the borough are jointly responsible for its maintenance as for a State highway, unless constructed of

"permanent paving material," when the borough alone is responsible, as provided in Sec. 10 of the Act of May 31, 1911, P. L. 468.

The State Highway Department is wholly liable for the subsequent maintenance of a section of a State highway route reconstructed or improved in the same manner as a State-aid highway, that is to say reconstructed or improved, by the aid or assistance of a county or township or county and township. (Note: In other words a State highway reconstructed under this act in the same manner as a State-aid highway remains a State highway. The act does not change the character of the highway, but provides a method of construction only, and the question of how such a State highway is to be maintained must be settled by the Act of May 31, 1911, P. L. 468, which provides for the maintenance of State highways whether located in townships or in boroughs.) *"In re State Highways," and "State Highway Department." Opinion by Wm. H. Keller, first Deputy Atty. Gen., 1915-16. Report and official opinions of the Attorney General, Pages 261 and 264.*

This section authorizes county commissioners and township supervisors to expend money in the joint improvement of State highway roads in the same manner as provided by the Act of May 31, 1911, P. L. 468. *State Highways. Opinion by Wm. H. Keller, First Deputy Atty. Gen., 1915-16, Report and Official Opinions of the Attorney General, Page 267.*

A county has the right to become a bidder for the reconstruction and improvement of a State highway when it is to be improved "in the same manner as a State-aid highway," under this section. "In the same manner as a State-aid highway," defined. *In re Reconstruction of State Highway by County. Opinion by Wm. H. Keller, First Deputy Atty. Gen., 3 Dep. Rep. 2666.*

Unless the work of reconstructing a State highway is done under the provisions of this act, the State must pay for the entire cost and not merely a part thereof. there is no provision in the Sproul Road Law which permits the State to contribute to a borough part of the cost of reconstructing or improving a highway. The work of reconstructing State highways must be done by contract, and the borough may be a bidder for such contracts whether for State-aid road or State highways improved in the same manner as State-aid highways: *In re Repair of Roads Lying within the Limits of a Borough and Forming part of a State Highway Route. Opinion of Wm. H. Keller, First Deputy Atty. Gen., 3 Dep. Rep. 3053.*

1827. The several counties, townships, boroughs, or incorporated towns in the Commonwealth that have made, or which may hereafter make, several or joint applications for the reconstruction of a State Highway, or any portion thereof, as a State-aid Highway, are hereby authorized to incur such indebtedness in the proportions agreed upon, as aforesaid, and to pay their respective shares of the cost thereof as provided for in the act to which this is a supplement.

Sec. 2, Act of June 5, 1913, P. L. 417.

1828. All work authorized under this supplement shall be done under contract, as provided for and set forth in the act to which this is a supplement, and the section or sections of State highway so reconstructed or improved shall be and remain a State Highway.

Sec. 3, Act of June 5, 1913, P. L. 417.

1829 Whenever in the construction of a State highway within the Commonwealth of Pennsylvania, wherein the State pays a portion of the cost, and the county, or township, or borough, pays a portion of the cost, and it is deemed advisable to widen the State highway beyond the width as laid out and ordered by the State Highway Commissioner, or other body having authority over the same, the county and township, or borough, jointly or the township or borough, may increase the width of the State highway, by and with consent of the State Highway Commissioner, or other body having charge of the construction of said State highway, and the cost of the additional width shall be borne jointly by the county and township, or borough, or by the said township or borough wholly, as the case may be; and authority is hereby given the several counties within this Commonwealth, through their commissioners, and the said township or borough through their proper officers, to enter into agreement providing for the additional width of the said State highway, in accordance herewith: Provided, Such additional width shall be constructed under the supervision of the State Highway Department, and according to their plans and specifications.

Sec. 1, Act of April 27, 1909, P. L. 201.

1830. All agreements heretofore made providing for the increase in width of State highways, in accordance with the foregoing sections, wherein the cost has been apportioned between the county and township, or borough, are hereby adjudged to be valid and sufficient in law; and the counties, through their commissioners, and the township or borough, are hereby authorized to pay the additional cost provided in said agreement.

Sec. 2, Act of April 27, 1909, P. L. 201.

(n) State-Aid Highways.

1831. The several counties and townships of the Commonwealth, or any of them, either jointly as county and township, or severally, expressing a desire to the State Highway Department, in manner hereinafter required, for State-aid, shall, from and after the passage of this act, be entitled to receive the aid and co-operation of the State in the improvement and subsequent maintenance of any road or highway, in any county or township of the Commonwealth, not herein defined as a State Highway, when complying with the provisions of this act governing same. The State, when granting the aid and co-operation desired, shall not in any case pay more than fifty (50) per centum of the cost of any road improvement, nor more than fifty (50) per centum of the maintenance thereafter; and the

remaining fifty (50) per centum of the cost and expense of improvement shall be paid, to wit: Twenty-five (25) per centum by the county, and twenty-five (25) per centum by the township, when the application for said aid is joint by county and township; and thereafter the township shall pay fifty (50) per centum of the entire cost of maintenance: Provided, That counties or townships may agree between themselves to contribute their joint proportion of the fifty (50) per centum of the total expense of any improvement, herein required to be borne by them, in different proportions from that herein specified. Where any township or county road or highway is desired to be improved by a county or township, without the joint action or co-operation of the other, then said county or township, as the case may be, shall pay the entire fifty (50) per centum of the cost of the road improvement, and fifty (50) per centum of the cost of maintenance thereafter: Provided, That any township desiring the aid and co-operation of the State in the permanent improvement of any of its roads shall levy a cash road-tax to meet the cost of such permanent improvement, and shall levy annually thereafter such further road-taxes in cash as are sufficient to pay the township's share of the annual maintenance of such highways: And provided further, It shall be lawful for any township or county of the Commonwealth to incur indebtedness or to issue bonds, in the manner authorized by law, for the payment of said township's or county's share of the cost of any permanent road improvement or maintenance undertaken under the provisions of this act.

Sec. 21, Act of May 31, 1911, P. L. 468.

1832. The State shall not furnish any aid or co-operation in the permanent improvement or maintenance of any county or township road or highway, to be improved as a State-aid highway, until and unless the supervisors or commissioners of the township in which the road desired to be improved lies, where the improvement is intended to be made jointly by township and county, shall first petition the county commissioners of the county, representing that any principal highway, or section thereof, lying within said township, is in need of reconstruction, and setting forth that the said township desires to take advantage of the provisions of this act to improve said highway. It shall then be the duty of said county commissioners to adopt a resolution authorizing the assumption by the county of its share of said improvement; and the said county commissioners shall then promptly petition the State Highway Department for the aid and co-operation of the State as desired for the particular road to be improved. Said petition of the county commissioners shall be accompanied by the said township petition, and it shall state the desire of both the township and county that

said road or highway shall be improved and maintained as a State-aid highway, according to such plans and specifications as shall be prepared by the State Highway Department; that the county and township, or townships, agree to pay fifty (50) per centum of the cost and expense of such improvement, and the township or townships will thereafter, in consideration of the aid and co-operation of the State so granted, pay fifty (50) per centum of the cost of repair and maintenance thereof. Such roads to be at all times under the authority and supervision of the State Highway Department. Said petition shall further state that the petitioners, upon approval thereof by the State Highway Department, will enter into an agreement with the Commonwealth, to be approved by the Attorney General or Deputy as to form, which shall embody and contain all matters of detail concerning the improvement, maintenance, and repair of the highway to be improved: Provided, When the aid and co-operation of the State in the improvement of any highway is desired by any county or township, without the intervention of the other, said county or township, if it shall agree to pay one-half of the cost of the improvement and maintenance thereof, shall be entitled to receive the aid and co-operation of the State, in like manner as in cases of joint applications by county and township: And provided further, That no State aid shall be paid or given, nor shall any work be commenced in the improvement of any road or highway in any township or county of this Commonwealth, until said agreement shall have been duly executed by the respective parties, pursuant to due and legal municipal and corporate action of both township and county; and the State Highway Commissioner shall then advertise for bids, and let contract or contracts for the improvement of the road desired to be improved, in the manner herein provided in the case of improvement of State Highways: And provided further, That the State Highway Commissioner may enter into contracts at any time, in amounts equal to the State appropriation then available, plus the respective shares of the counties or boroughs.

Sec. 22, Act of May 31, 1911, P. L. 468.

1833. In any township of the Commonwealth, wherein the owners of the majority of the assessed valuation of real estate therein shall desire any principal road or highway, being and lying in their said township, to be improved and maintained as a State-aid highway, they may petition the supervisors or commissioners of their said township for said improvement to be made, and require them to petition the county commissioners of the county to make application to the State Highway Department for the aid and co-operation of the State in the improvement and maintenance of said highway:

whereupon the duty of the county commissioners in the premises shall be the same in form and procedure as in other cases hereinbefore provided.

Sec. 23, Act of May 31, 1911, P. L. 468.

1834. In all cases where the township supervisors or commissioners or county commissioners refuse to act upon, or unduly delay action on, any petition for the improvement and maintenance of any road or highway as a State-aid highway, any citizen, taxpayer of the township or county, may, by petition, present the facts of the matter to the court of quarter sessions, requesting the court to order such action thereon as the case may require; and if, after due hearing had before said court, it shall appear that the truth of the matters alleged in the petition are sustained, the court shall make an order directing the township supervisors or commissioners, or county commissioners, as the case may be, to forthwith act upon said application or applications for State-aid, and that the said application or petition for the improvement be forthwith forwarded to the State Highway Department.

Sec. 24, Act of May 31, 1911, P. L. 468.

1835. If within thirty days after the receipt of any petition for highway improvement in any township, under the provisions of this act, a petition signed by the owners of a majority of the assessed valuation of real estate in said township is received by the county commissioners of the county in which said township is located, protesting against said proposed expenditure upon the part of the township, then the county commissioners shall take no action on said petition for improvement, but shall return the same to the township supervisors or commissioners from whom it was received.

Sec. 25, Act of May 31, 1911, P. L. 468.

1836. Whenever the county commissioners of any county shall represent by petition to the State Highway Commissioner that any principal highway in said county, outside the corporate limits of any city, is not in a satisfactory condition for comfortable and easy travel at all seasons of the year, and ought to be re-constructed as a State-aid highway, it shall be the duty of the State Highway Commissioner, or any assistant directed so to do, to examine such highway; and if, in the judgment of the State Highway Commissioner, said representation is well-founded, he shall determine what changes should be made in said existing highway, what portion of it shall be improved and in what manner, and shall make the necessary survey, prepare accurate plans, and make detailed estimate of the expense of the work which in his opinion should be done, and report

the same to the county commissioners of the county and the supervisors or commissioners of the township or townships in which said highway may lie. If the said county commissioners and township supervisors, or commissioners, then decide that it is advisable to go on with the work, they, the said county commissioners and township supervisors, or commissioners, shall enter into the agreement with the State Highway Department hereinbefore specified: Provided, however, Said improvement shall not be commenced until the funds at the disposal of the State Highway Department for such purpose shall be sufficient to meet the cost and expense of the improvement desired.

Sec. 26, Act of May 31, 1911, P. L. 468.

1837. The State aid authorized by the provisions of this act in the construction of State-aid highways shall be ratably apportioned among the several counties of the Commonwealth by the State Highway Commissioner, according to the mileage of township and county roads in the respective counties: Provided, That if the county commissioners of any county shall fail, by formal action, to take up State-aid applications on file with the State Highway Department to exhaust the State-aid apportionment to the credit of such county, prior to June first of the year next succeeding the appropriation, the unused balances of such appropriations, and any heretofore made for the same purpose, shall revert to the State-aid fund, to be redistributed, on the same basis as the original apportionment, among the several counties of the Commonwealth that have filed with the State Highway Department formal indication of preference for taking up applications requiring the expenditure of such sums greater than the amount of their apportionment; Provided further, That if for any reason the county, township, or borough, either singly or jointly, refuses to execute agreements, submitted by the State Highway Department, authorizing the execution of contract or contracts, the amount of State-aid funds represented by said agreements shall be forfeited by the county, and thereafter such sum may be used by the State Highway Department for State Highway construction.

Sec. 27, Act of May 31, 1911, P. L. 468, as amended by Act of March 10, 1921, P. L. 23.

1838. All highways improved as State-aid highways shall conform to the provisions of this act and the rules and regulations of the State Highway Department as provided in case of State Highways: Provided, That no section of State-aid highways improved under this act shall be less than one-half mile in length, nor shall the improved portion thereof be less than twelve feet in width.

Sec. 28, Act of May 31, 1911, P. L. 468.

1839. The work of maintaining and repairing all State-aid highways, improved under the provisions of this act, or which shall have been previously reconstructed by State-aid, shall be done by the State Highway Department; and fifty (50) per centum of the cost thereof shall be paid by the several townships wherein such roads may lie; or by the county, when such roads have been improved upon the petition of such county without the co-operation of the township.

Sec. 29. Act of May 31, 1911, P. L. 468.

1840. Where a portion of a highway traversing one or more townships, and for the improvement and maintenance of which as a State-aid highway, according to the provisions of this act, application has been made by said township or townships, shall lie within the limits of or traverse any borough or boroughs, or any incorporated town or towns, and where the failure of said borough or boroughs, or incorporated town or towns, to improve the said highway would leave a break or unimproved section in a continuous improved highway, it shall be lawful for the county commissioners of the county in which said highway is located to enter into an agreement with said borough or boroughs, or incorporated town or towns, to bear a portion of the expenses of said improvement of the highway within the limits of the said borough or town, in the same manner as herein provided for the co-operation between the counties and townships: Provided, That an improved road shall have been previously constructed in an adjoining township, borough, or town to the lines of the borough or town making application or petition for such improvement, the State Highway Commissioner is authorized to bear a portion of the expense of said improvement of said highway within said borough or town limits; but in no case shall the portion of said expense to be borne by the State exceed fifty (50) per centum of the total expense of said improvement. Boroughs or incorporated towns shall only receive aid from the State, as aforesaid, in cases where failure to receive such aid would prevent a continuous improvement of an important State-aid highway: Provided, That any borough or incorporated town which is willing to pay one-half the cost of constructing any such road hereinbefore mentioned, may make application direct to the State Highway Department. All improvements made in borough or town highways, as herein provided, shall be of a character similar to that specified for the township or townships through which the highway to be improved passes in reaching said borough or town: Provided, however, That the council of any borough or boroughs, or incorporated town or towns, through which such highway passes, shall, before its construction, by proper ordinance, enter into an agreement with the State Highway Commission-

er for the payment of said borough's or town's share of the cost of construction and of the subsequent maintenance of such portion of said State-aid highway as lies within the limits of said borough or town, similar to that required elsewhere in this act of the commissioners or supervisors of townships.

Sec. 30, Act of May 31, 1911, P. L. 468.

1841. Any county, township, borough, or incorporated town may, through its commissioners or supervisors or councils, bid for the construction or improvement of such portion of any State-aid highway, undertaken under the provisions of this act, as may lie within its limits; and any county, township, borough, or incorporated town submitting such bid shall have the same consideration, and shall be governed by the same rules and regulations of the department, as in the case of other bidders; and, if awarded the contract, shall fulfill the same, and be subject to the same conditions and regulations as herein provided for other contractors.

Sec. 31, Act of May 31, 1911, P. L. 468.

With reference to State-aid highways or State highways improved in the same manner as State-aid highways a borough may become a bidder and be awarded the contract if it submits the lowest bid. In any event, however, there must be a contract whether with the borough or some outside contractor. In re Repair of roads lying within the limits of a borough and forming part of a State Highway Route. *Opinion by Wm. H. Keller, First Deputy Atty. Gen., 3 Dep. Rep. 3053.*

1842. Where any person or corporations shall sustain damage by the taking of land to alter the location of any State-aid highway which may be improved under this act, and the county commissioners and township supervisors or commissioners and parties so injured cannot agree on the amount or damages sustained, such persons or corporations may present their petition to the court of quarter sessions for the appointment of viewers to ascertain and assess such damages; and the form and procedure therein shall be governed by existing laws relating to the assessment of damages in opening public highways; and such damages, when ascertained, shall be paid,—fifty per centum (50) by the State, and twenty-five per centum (25) by the county, and twenty-five per centum (25) by the township: Provided, Where the land so taken is in connection with the improvement of State-aid highway, which is being done upon the petition of township or county alone, and not jointly by the township and county, then fifty per centum (50) of the damages sustained shall be paid by the county or township.

Sec. 32, Act of May 31, 1911, P. L. 468.

1843. The total cost of the improvement and maintenance of the State-aid highways constructed under the provisions of this act, as

provided by the terms of the contract, or otherwise as herein provided when properly certified by the State Highway Commissioner, shall be audited by the Auditor General, and when audited and allowed shall be paid out of moneys specifically appropriated for this purpose, by warrants drawn therefor by the Auditor General upon the State Treasurer. The share of the county shall be paid as provided by its contract, and, otherwise, by the provisions of this act, to the State Treasurer by the county treasurer, upon the warrant of the county commissioners, in such sum or sums as shall be certified by the State Highway Commissioner, from time to time, during the performance of the work or contract, or as provided by the contract, and, otherwise, by the provisions hereof, after the same shall be completed. The share of the township or townships, or of any borough or boroughs, or of any incorporated town or towns, shall be paid to the State Treasurer by the township supervisors or commissioners, or by the borough treasurer, or by the town treasurer, as the case may be, in the manner and form as in the case of counties, and as other debts of said townships or boroughs are paid, when and as demanded by certificate of the State Highway Commissioners during the performance of the work or contract, or, in like manner, after the same shall be completed. Upon the completion of any State-aid highway improvement, or upon the ascertainment of any additional improvement cost, or of any maintenance expense, incurred thereon thereafter by the State Highway Department, the State Highway Commissioner shall certify the same to the State Treasurer, and to the county commissioners and township supervisors, or borough or town authorities, as the case may be, the respective shares of said cost or expense for which the county, township, borough, or incorporated town is liable. If the said shares or amounts, so certified by the State Highway Commissioner, of the cost and expense of the improvement, or of the subsequent maintenance thereof, as provided by contract and the provisions of this act, of the county, township, borough, or incorporated town, or all or either of them, shall not be paid to the State Treasurer within thirty days after being certified, then the said shares of the county, township, borough, or incorporated town, either or all of them, remaining unpaid, shall be charged by the State Treasurer against any funds of said county, township, borough, or incorporated town which may be in the hands of the State Treasurer, or which may thereafter come into his hands, excepting school funds, and may also be recovered by action at law or equity as any other debts of such counties, townships, boroughs, or incorporated towns are by law recoverable. The amounts paid under this act to the State Treasurer by the counties, townships, boroughs, and towns shall be placed by

him to the credit of the proper fund for highway construction or maintenance, and shall immediately be available for the use of the State Highway Department for construction or maintenance, as the case may be; and the State Highway Commissioner is hereby authorized and empowered to apportion the said amounts, thus paid into the State Treasury by the counties, townships, boroughs, and incorporated towns, among the several counties as hereinbefore provided. The State Highway Commissioner may make partial payments to any contractor performing any highway improvement, under this act, as the same progresses, upon estimate made by the State Highway Department; but not more than ninety (90) per centum of the estimate of work done, or of the contract price, shall be paid in advance of the full and satisfactory completion of said improvement, and acceptance of same by the State Highway Commissioner.

Sec. 33 Act of May 31, 1911, P. L. 468.

The purpose of this section was to enable the Commonwealth to receive, without delay or litigation, from each municipality its share of the cost and expense of the highway improvement or maintenance by permitting the mutual obligations of the Commonwealth and the municipality to be set off against each other. It was not intended to enlarge the liability of the municipalities to include obligations not their own, for the liabilities for the cost and expense of highway improvement or maintenance is not joint, but several, so that the State Treasurer may charge the amount due the Commonwealth by a borough, for highway improvement or maintenance, against the funds of the borough: *Com. ex rel v. R. K. Young, State Treasurer*, 18 Dauph. C. 507; s. c. 14 Just. L. R. 90, 45 Pa. C. C. 334.

1844. The word "highway," as used in this act, shall be construed to include any existing causeway or bridge, or any new causeway or bridge, or any drain or watercourse, which may form part of a road, and which has been or might properly be built, according to any existing laws, by the township of the Commonwealth. A "State-aid highway," as the term is used in this act, shall be construed to mean only such highway as is improved with the aid and co-operation of the State with county and township, or with county or township, borough or incorporated town, either or severally, as the case may be, according to the terms and provisions hereof; but shall not include any causeway or bridge which should properly be built by the county or by the State, under existing laws.

Sec. 34, Act of May 31, 1911, P. L. 468.

1845. All State-aid highways, under the provisions of this act, shall be marked, and suitable signboards erected and maintained at crossroads, as provided in the case of State Highways, and the same shall be paid for as part of the cost and maintenance of the highway.

Sec. 35, Act of May 31, 1911, P. L. 468.

1846. The State Highway Commissioner shall compile and prepare a plan, or plans, of all State-aid highways in the Commonwealth, which shall show and contain all the information required to be shown and contained upon the maps or plans of State Highways, so that the department shall at all times have a complete record of the same. In order that the said plan or plans of State-aid highways may be authentic and complete in all respects, the county commissioner or county engineers of the several counties of this State, and officials of all cities, boroughs, towns, and townships in the State, which now have, or may hereafter have by law, authority over the public highways and bridges, shall, upon written request of the State Highway Department, furnish said department with any information relating to the mileage, cost of building and maintenance, condition, and character of the highways under their jurisdiction, and with any other needful information relating to said highways.

Sec. 36, Act of May 31, 1911, P. L. 468.

(o) **County and Township Payments for Improvement and Maintenance of State and State-Aid Highways. Incurring of Indebtedness.**

1847. Whenever, under any law of this Commonwealth, a county and a borough, or a county and a township, may enter into a contract with the State Highway Department for the construction or improvement of a State or State-aid highway, such county may contract with the State Highway Department to pay the whole of such part of the cost thereof as is not paid by the Commonwealth. The county and the borough or the township where such improvements are made may contract for the reimbursement to the county, by the borough or township, of a part of the cost for which the county has contracted with the State Highway Department, under such terms as may be mutually agreed on.

Sec. 1, Act of May 11, 1921, P. L. 519.

1848. Any borough or township so contracting may incur such indebtedness, and issue interest bearing bonds therefor, as may be necessary to pay their share of the costs of such construction or improvement as agreed on in such contract, subject to the constitutional limitation of such indebtedness.

Sec. 2, Act of May 11, 1921, P. L. 519.

1849. Any county of this Commonwealth may appropriate and expend moneys, and incur such indebtedness and issue bonds or other obligations therefor, as may be necessary to pay for the im-

provement and maintenance of any State highway or State-aid highway or any public highway within its proper limits: Provided, however, That no improvement can be made to any State highways or State-aid highways until the same has been submitted to and approved by the State Highway Department: And provided further, That no county shall appropriate and extend any of such moneys for the improvement and maintenance of any public highway, other than a State highway or State-aid highway or county road, where the highway is to be improved jointly by the township or borough and county, until and unless the supervisors or commissioners of the township or borough council of the borough in which the highway proposed to be improved lies shall first petition the county commissioners of the county, representing that any highway or section thereof, lying within such township or borough, on which it is proposed that said money shall be expended, is in need of reconstruction or repair, and particularly describing said highway, and until and unless the said application has been submitted to and approved by the State Highway Department; And provided further, That when the improvement and maintenance of any public highway in the county is desired by the county without the intervention of the township or borough, the commissioners of said county may make application for approval direct to the State Highway Department.

Sec. 1, Act of June 12, 1919, P. L. 450, as amended by Sec. 1, Act of March 10, 1921, P. L. 26.

(p) Closing of Highways to Travel. Detours.

1850. From and after the passage of this act, except in the case of emergencies wherein the safety of the public would be endangered, no public road or highway in this Commonwealth, excepting State highways and State-aid highways, shall be closed to vehicular traffic, except upon order of the authorities having charge of the maintenance of such highways, nor for a longer period than is necessary for the purpose for which such order is issued.

Sec. 1, Act of May 17, 1921, P. L. 908.

1851. When any public road or highway shall be so closed, it shall be the duty of the authorities authorizing the closing to immediately designate or lay out a detour, on which they shall erect or cause to be erected and maintained, while such detour is in use, legible signs, at each public road intersection through out its entire length, indicating the direction to the main highway; and, during the period when such detour is in use, it shall be the duty of the authorities closing the main highway to maintain such detour in safe and passable condition; and they are hereby authorized to pay for

the cost of such maintenance out of such funds as are available for the maintenance of the highways in their charge. It shall also be the duty of such authorities to immediately remove all detour signs when the highway originally closed is again opened for traffic.

Sec. 2, Act of May 17, 1921, P. L. 908.

(q) Water Troughs Along Highways.

1852. Under the sanction and supervision of the supervisors of roads, or road commissioners of the respective townships, (or council, or persons having charge of the streets, in the respective boroughs of this Commonwealth,) any person, or persons, or chartered societies not for profit, the object of which shall be to erect and maintain watering troughs along the public roads, who may erect and maintain in good repair, a public watering trough of not less than six feet in length, twelve inches in width and ten inches in depth, in the clear, of either wood, or iron, or of stone, except that the stone troughs shall be not less than two feet in length, and have pure clear water continually running into the same, except in hard freezing weather, by a pipe, pipes, or otherwise, upon the side of the public highway, erected of sufficient height and of easy access, suitable for watering horses and cattle, and approved by the supervisors or road commissioners of such township, (or person having charge of the streets of the boroughs,) shall be entitled to receive from the road fund thereof a sum of money not exceeding five dollars annually, as shall be agreed upon at the time of the erection of such trough: (Provided, That the town council, or person having charge of the streets, in the several boroughs, may erect proper and suitable watering troughs at an expense not exceeding twenty dollars:) Provided, further, That after the first payment and before receiving any subsequent annual payment, such chartered society shall publish a statement, attested by the president and secretary, certifying that all the moneys received from the road fund, as provided by said act has been expended in the erection of troughs and supplying the same with water, or in keeping those already erected in proper repair: Provided, That, if more than one watering trough is erected and maintained within five miles on the same road, but one such trough shall be entitled to the benefit of this act, and the oldest and first trough shall have the preference.

Sec. 1, Act of April 28, 1876, P. L. 51, as amended by Sec. 1, Act of June 25, 1885, P. L. 168.

This amendment was crudely drafted. It is entitled a supplement, whereas it is in fact a direct amendment. According to the language of the enacting portion of section one, it purports to amend a supplement to the Act of 1876 whereas it directly amends the aforesaid Act of 1876 as it was originally enacted.

1853. On any public road where running water cannot be supplied for such trough, any person or persons, who may provide water for the purpose aforesaid by a pump, and keep the same in proper repair to be worked by the person desiring water for their horses or cattle, may erect such pump and trough and to be approved of by the supervisor or road commissioner of such (borough or) township, shall be entitled to the same annual pay from the road fund thereof as provided for in the first section of this act.

Sec. 2, Act of April 28, 1876, P. L. 51.

Sec. 3 of this act authorizing supervisors to erect water troughs was repealed by the township code. See section 381, Cl. XII. and Section 386, Cl. V.

1854. Whenever any watering trough is erected for the purpose aforesaid, the same shall be public property; and any person or persons wantonly destroying or injuring the same, or committing any nuisance upon or near the same, shall be liable to a prosecution before any justice of the peace of the proper county, and if duly proven to the satisfaction of the said justice, shall be punishable by a fine not exceeding twenty dollars, and upon refusing to pay the same, together with the costs thereof, may be by the said justice committed to the prison of the county for a period not exceeding ten days.

Sec. 4, Act of April 28, 1876, P. L. 51.

1855. Whenever watering troughs have already been erected on the public highways, the supervisors and road commissioners shall give the owners the preference as to the benefits of this act: Provided, They accept the provisions of the same.

Sec. 5, Act of April 29, 1876, P. L. 51.

(r) Defacing Sign or Index Boards.

For additional provisions relating to this subject, see sections 537 to 539.

1856. On and after the passage of this act, it shall be unlawful for any person to wilfully destroy, remove, injure, or deface any sign or index board, erected upon or near any public street, road, or bridge in this Commonwealth, by the authorities of any such borough, township, or county therein; or erected with the consent of the authorities having jurisdiction over such street, road, or bridge, by any club, association, or other organized body; for the direction, guidance, or safety of travellers; and any person violating this act shall be deemed guilty of a misdemeanor, and shall forfeit and pay a fine of not less than ten dollars, nor more than twenty-five dollars, with all costs of prosecution, together with the value of such sign so destroyed, removed, or defaced, and, in default of payment of said

fine, costs, and expenses, shall undergo on imprisonment, in the jail of the proper county, for a period of not less than five, nor more than sixty days, at the discretion of the court.

Sec. 1, Act of April 23, 1909, P. L. 171.

1857. Any and all such signs, of wood, metal, or other substance, affixed to trees or posts in or upon any highways, properly erected in such manner that they do not interfere with travel; or upon fences, telegraph, telephone, trolley or other poles, with the permission of the owners thereof; or upon private grounds where consent has been obtained from the owners and tenants thereof, and nearby public roads, shall be deemed to be within the provision of this act.

Sec. 2, Act of April 23, 1909, P. L. 171.

(s) Throwing Glass Upon Highways.

1858. It shall be unlawful for any person to throw, or cause to be thrown, any glass or metal or refuse, dangerous or detrimental to the traveling public, upon any highway of any township or borough.

Sec. 1, Act of May 1, 1913, P. L. 153.

1859. Any person who shall violate the provisions of this act shall, upon conviction thereof before any justice of the peace of the proper township or borough, be sentenced to pay a fine of not less than ten dollars (\$10.00), nor more than one hundred dollars (\$100.00).

Sec. 2, Act of May 1, 1913, P. L. 153.

(t) Use of Convict Labor on Roads.

1860. As used in this act, the term "jail" means penitentiary, jail, prison, or workhouse.

"Warden" means any person in charge of a jail.

"Highway" means any highway, road, street, or alley.

"Convict" means any inmate of a jail.

"Municipality" means any municipal corporation or quasi municipal corporation.

Sec. 1, Act of June 4, 1915, P. L. 812.

1861. The warden of any jail is hereby authorized and directed to detail for work on the public highways such convicts as he may deem advisable, excepting prisoners under sentence of death, upon the written request of the State Highway Commissioner, for all State roads; the county commissioners, for all county roads; the township commissioners or township supervisors, as the case may be, for town-

ship roads; the mayor or burgess, as the case may be, for all municipal streets. The detail shall be voluntary on the part of the convict, and shall in no way be compulsory.

Sec. 2, Act of June 4, 1915, P. L. 812.

1862. Convicts detailed to highway work shall, while so engaged, be under the general direction of the warden, or overseers appointed by him, and shall be subject to such rules and regulations with respect to their hours of labor, conduct, and control as the warden shall establish.

Sec. 3, Act of June 4, 1915, P. L. 812.

1863. The convicts shall not be required to wear stripes. For any infraction or violation of the rules and regulations the maximum punishment of any convict shall be his summary return to confinement in the jail, and loss of all deductions from the time of his sentence which he may have been entitled to up to the time of such infraction or violation.

Sec. 4, Act of June 4, 1915, P. L. 812.

1864. Each convict shall be allowed the sum of twenty-five cents for each day's labor. This sum shall accumulate as a fund to be paid the convict on the termination of his sentence, or on his release by pardon or parole, and which shall be in addition to the sum of money ordinarily given discharged convicts. The sum shall be paid by the State, county, township, or municipality having the work done.

Sec. 5, Act of June 4, 1915, P. L. 812.

1865. On petition of any convict, the warden may pay out from any sum so accumulated a portion, or all thereof, in support of a dependent wife, children, or parent of such convict in need or distress.

Sec. 6, Act of June 4, 1915, P. L. 812.

1866. The warden, on the written requests for convicts by the State Highway Commissioner, in the construction of State roads; or the county commissioners of each county, in the construction of county roads; or the township supervisors or township commissioners, as the case may be, in the construction of township roads; or the municipal authorities, in construction of municipal streets; shall determine upon what highways convicts so detailed shall be employed, whether in the improvement of existing highways or in the construction of new highways. The State Highway Commissioner shall have general supervision and direction of all State road work, and the county commissioners of all county roads, the township commissioners or township supervisors, as the case may be, of all township roads.

and the municipal authorities of all municipal streets, to the improvement or construction of which convicts have been detailed .

Sec. 7, Act of June 4, 1915, P. L. 812.

1867. Hereafter convicts of any jail, undergoing sentence in accordance with law, who shall or may be engaged in work on any highway, and who shall conduct himself in accordance with the rules of the prison and perform his work in a creditable manner, shall be granted such good time in addition to that allowed by law as the Governor may order, not to exceed (10) days in any one calendar month. The Governor shall not execute any of the rights or powers herein granted unto him until the Lieutenant Governor, Secretary of the Commonwealth, Attorney General, and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session, upon such rules as they shall provide, shall have recommended the commutation of sentence.

Sec. 8, Act of June 4, 1915, P. L. 812

1868. Convicts employed under this act shall not be used for the purpose of building any bridge, or other structure of like character, or to do any work in connection therewith, which requires the employment of skilled labor.

Sec. 9, Act of June 4, 1915, P. L. 812.

1869. All disbursements for expenditures for convict labor shall be on warrants certified to by the officer or person in charge of the highway work, and upon approval by the State Highway Commissioner, county commissioners, township commissioners, township supervisors, or proper municipal authorities be paid to the warden for the use of such convicts, on warrants drawn by the State Treasurer, county treasurer, or treasurer of the board of township commissioners, township supervisors, or of the municipality, from such funds as may be designated for labor for such convicts, to be used in the repair and construction of such highways.

Sec. 10, Act of June 4, 1915, P. L. 812.

(u) Division of Township Highways of State Highway Department.

1870. The State Highway Commissioner shall establish in the State Highway Department a Division of Township Highways, which shall be in charge of the Township Commissioner.

Sec. 1, Act of July 8, 1919, P. L. 770.

1871. The State Highway Commissioner shall appoint a township engineer and such additional engineers, clerks, officers, and employes

that may be required to carry out the provisions of this act, fix the rate of their salary, and the amount of the bond, if any, they shall be required to give.

Sec. 2, Act of July 8, 1919, P. L. 770.

1872. The salaries and expenses of all such employes shall be paid by the State Treasurer, upon warrants of the Auditor General, out of the moneys appropriated therefore, in the same manner as the salaries and expenses of other officers and employes of the State Highway Department are paid .

Sec. 3, Act of July 8, 1919, P. L. 770.

1873. The Township Commissioner, under the direction of the State Highway Commissioner, shall: First, Have general supervision of all township highways and bridges, and approve or disapprove all agreements and contracts made by township supervisors for the expenditure of township money or township, county and State moneys, except for the construction, improvement or maintenance of State highways and State-aid highways.

First paragraph, Sec. 4, Act of July 8, 1919, P. L. 770, as amended by Sec. 1, Act of May 17, 1921, P. L. 826.

1874. Second. Approve plans and specifications and estimates for the erection and repair of township bridges and culverts and for the construction and maintenance of township highways. Plans and specifications for the construction or repair of township bridges or culverts shall not be approved unless the same conform to the standards of the State Highway Department. No contract for the repair or construction of any township, bridge or culvert or for the reconstruction of a township road shall be valid unless such contract is in accordance with standard plans prescribed or unless plans, specifications, and estimates have been prepared or approved by the Township Commissioner.

Third. Compel compliance with laws, rules, and regulations relating to such highways and bridges by township highway officers, and see that the same are carried into full force and effect.

Fourth. Compile statistics relating to public highways throughout the State and such other information in regard thereto as he shall deem expedient.

Fifth. Prepare tables showing total number of miles of highways in the State, by township and county, and file a copy of the same in the office of the State Highway Department.

Sixth. Make an annual report to the State Highway Commissioner for publication covering the work of his division, the condition and needs of the township roads of the Commonwealth, and containing

such recommendation as he shall deem necessary for their further improvement.

Seventh. Call such State, county, or township road meetings or conventions at such times and at such places as he shall deem wise, and direct officers and employes of his division to attend; assist in the formation of county associations of township officers, and be represented at their conventions.

Sec. 4, Act of July 9, 1919, P. L. 770.

1875. The Township Commissioner, subject to the approval of the State Highway Commissioner, shall divide the State into suitable districts, and assign to each district an assistant engineer of township highways. Each such assistant engineer, subject to the rules and regulations of the Township Commissioners, shall:

First. Have the general charge of all township highways and bridges within his district, see that the same are improved, repaired and maintained, as provided by law, and according to the rules and regulations of the Township Commissioner, and have the general supervision of the work of constructing, improving and repairing township bridges and highways in his district, so far as it is practical to do so.

Second. Visit and inspect highways and bridges in each township of his district at least once in each year or whenever directed by the Township Commissioner, and advise and direct how to repair, maintain and improve such highways and bridges.

Third. Examine the various formations and deposits of road building material, in his district for the purpose of ascertaining the materials which are best available and suitable for the improvement of highways therein, and when requested by the Township Commissioner, submit samples of such formations and deposits, and make a written report in respect thereto.

Fourth. Investigate and recommend for approval or disapproval, all contracts for the purchase by the townships of the second class of road building and repairing equipment, including motor trucks and drain or culvert pipe.

Fifth. Report to the Township Commissioner, annually on or before December first in each year, in relation to the township highways and bridges in his district, in manner and form as may be prescribed by the Township Commissioner. Additional reports shall be made when required by the Township Commissioner.

Sixth. Attend any meeting or convention when directed to do so by the Township Commissioner.

Sec. 5, Act of July 8, 1919, P. L. 770, as amended by Sec. 2, Act of May 17, 1921, P. L. 826.

This section does not relieve the township supervisors from the duties imposed on them by prior legislation or from liability to perform the same, and they are liable for injuries caused by the absence of a guard rail on a bridge: *Benedict v. Fulton Township Supervisors*, 30 D. R. 433.

1876. Each township of the second class that has complied with all the provisions of the acts of Assembly which relate to and govern townships of that class, and have filed annual reports and agreements and copy of treasurer's bond, shall be entitled to receive a portion of the State reward fund apportioned to the respective counties: Provided, That an application has been made to the State Highway Department for such State reward on or before March first as required by law: And provided, That the apportionment made to the county has not been exhausted.

Sec. 6, Act of July 8, 1919, P. L. 770.

1877. Upon completion of the work for which a State reward has been granted according to the plans and specifications and contract or agreement, verified by the sworn statement of a majority of the board of township supervisors and the certificate of the assistant engineer, the Township Commissioner, with the approval of the State Highway Commissioner, shall certify to the Auditor General the amount of State reward due said township, and he shall draw a warrant upon the State Treasurer, as provided by act of Assembly, to the treasurer of the board of supervisors, which shall be paid out of money appropriated for that purpose.

Sec. 7, Act of July 8, 1919, P. L. 770.

1878. The State Highway Department shall furnish, from time to time, bulletins of instruction to each board of township supervisors, for the building, repairing, maintenance, and improvement of township roads and bridges, and shall furnish any additional information when called upon to do so. The department shall also furnish, from time to time, free of charge, standard plans and specifications for permanent improvements in the building of bridges and culverts, establishing of grades, proper drainage and such other matters as may be deemed essential.

Sec. 8, Act of July 8, 1919, P. L. 770.

1879. The State Highway Department shall furnish blanks to the supervisors, in which said supervisors, or a majority of them, shall make a sworn statement that the money has been expended in building repairing, maintaining, dragging, and improving the township roads, according to the instructions, standards, and specification or the rules and regulations prescribed by the State Highway Department, so far as the available funds and local conditions make it possible. Upon the neglect or refusal of the supervisors of any township to

carry out the instruction, rules, and regulation of the Township Commissioner, the Township Commissioner may withhold from such township, so neglecting or refusing, the amount of State reward to which it would be entitled for the year in which said neglect or refusal occurred.

Sec. 9, Act of July 8, 1919, P. L. 770.

1880. The State Highway Department shall supply the necessary books, blanks, and forms and shall prescribe the method of keeping township accounts of moneys received and expended for highways, machinery, bridges, tools, and implements and for miscellaneous purposes, which shall be uniform through the State so far as practicable. The Township Commissioner may at any time cause an examination of all such accounts and records to be made. The Township Commissioner shall forward to the boards of supervisors by December first of each year, all supplies necessary for the proper conduct of the affairs of the township, which shall include blanks for yearly reports of supervisors to the Township Commissioner, forms for monthly reports by township superintendents, and road-masters, to supervisors, and orders for the payment of moneys by township treasurers.

Sec. 10, Act of July 8, 1919, P. L. 770, as amended by Sec 3, Act of May 17, 1921, P. L. 826.

1881. The clerk of the court of quarter sessions in each county shall, not later than the twentieth day of November following every municipal election, certify to the State Highway Department the names and post offices addresses of all supervisors and commissioners of the townships in said county. The failure or neglect of any clerk of the courts to furnish such list shall be deemed a misdemeanor. Upon conviction, any such clerk shall be punished by a fine of not more than fifty dollars.

Sec. 11, Act of July 8, 1919, P. L. 770.

1882. It shall be unlawful for any assistant engineer of township highways to be interested, either directly or indirectly, in any purchase made or contract relating to roads and bridges, except as provided for in this act, or to furnish any materials therefor. Any assistant engineer knowingly violating the provisions of this section shall be guilty of a misdemeanor. Upon conviction thereof, he shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or be imprisoned for a term not exceeding six months or both. All fines collected under the provisions of this section shall be paid into the State Treasury.

Sec. 12, Act of July 8, 1919, P. L. 770.

(v) Bridges

This chapter does not contain a complete copy of the existing law relating to county bridges which are located in townships. Only so much of said law as provides the several methods whereby a township may be relieved from the burden of constructing and repairing certain bridges has been included.

For other provisions relative to the erection and construction of bridges, piers and abutments see section 855—922. For provisions relating to the defacing of signs on bridges see this chapter, subdivision (r), sections 1856 and 1857.

For provisions relating to the subject of views and viewers in road cases see sections 1726 to 1760 and notes thereunder.

1883. When a river, creek, or rivulet, over which it may be necessary to erect and construct a bridge, crosses a public street, road, or highway in any city, borough or township of this Commonwealth, and the erecting and constructing of such bridge requires more expense than it is reasonable that the respective city, borough, township or townships, or any two of them when they are adjoining, should bear, the court, having jurisdiction as aforesaid, shall, upon the representation of the proper authorities of the respective city or borough, or of the supervisors of the township, or on the petition of any of the inhabitants of the respective city, borough, or township, order a view in the manner provided for in the case of roads; and if, on the report of the viewers, it shall appear to the court, grand jury, and commissioners of the county that such bridge is necessary, and would be too expensive for such city, borough, township or townships, or any two of them adjoining to bear, it shall be entered on record as a county bridge. Should any county bridge, whether heretofore or hereafter erected, be insufficient, for any cause, to accommodate the public travel, it shall be lawful to proceed in said court by petition, in the manner aforesaid, with like proceedings and with the same effect as if the petition was for an original county bridge; and, upon the approval of the court, grand jury, and county commissioners, a new bridge may be erected and constructed to take the place of the bridge then existing.

Sec. 35, Act of June 13, 1836, P. L. 551, as amended by Sec. 1, Act of June 12, 1907, P. L. 523.

The prerequisites to the authority of county commissioners to build a county bridge are (1) A report of viewers that the bridge is necessary and too expensive for the township, (2) that these facts have been made to appear to the court, grand jury and county commissioners, (3) that the bridge has been entered on record as a county bridge. If either has not been taken the commissioners are not empowered to spend the money of the county in the erection of the bridge: *Com. v. Bowman*, 218 Pa. 336; *Loyalhanna Creek Bridge*, 45 Pa. C. C. 311.

A county cannot be compelled to erect a county bridge on a condemned turnpike which has been taken over by the Commonwealth as a State Highway: *Commonwealth v. Centre County Commissioners*, 42 Pa. C. C. 101.

Where a turnpike road is freed from tolls a bridge built on the line of the road does not become a county bridge, and if such bridge is destroyed by ice, the township must repair it, unless relieved by proceedings under this section: *Bridge on Bedford and Stopstown Turnpike Road*, 14 Pa. C. C. 296.

In all bridge proceedings, whether exceptions be filed or not, affirmative determination of the question of necessity by the court is a positive statutory duty which is not committed to the independent action of viewers, as in road cases: *Bethlehem Intercounty Bridge*, 14 North. C. R. 73.

A report of "no bridge" by a grand jury upon the report of viewers approving the erection of a bridge, ends the proceedings and it is error for the court to refer the bridge to another grand jury: *Pequea Creek Bridge*, 68 Pa. 427; *Bridge in Rapho and West Hempfield Townships*, 1 Lunc. L. R. 27.

A mandamus will lie to compel the erection of a county bridge, after a lapse of fourteen years from the time it was authorized. The county having neglected a duty cannot be heard to complain: *Commissioners of York County v. The Commonwealth ex rel Smyser*, 72 Pa. 24.

A review is a matter of right in proceedings to erect a county bridge and the report of viewers should lie over until the next term in order to allow time for filing of exceptions and review. A review will be allowed where report of viewers was prematurely laid before a grand jury and approved: *Bedford Bridge*, 72 Pa. 42; *Lehigh Township Road*, 17 Pa. C. C. 236.

The approaches are a necessary part of a bridge and when a bridge is directed to be built by the county, the commissioners should not only build the piers and the superstructure but should also construct proper approaches, reasonably safe and convenient for public travel: *Penn Turp., v. Perry Co.*, 78 Pa. 457.

Where a bridge has been entered of record as a county bridge and built by the county, the expense of building the approaches must be borne by the county: *Westfield Borough v. Tioga County*, 150 Pa. 152; *Comm. ex rel. v. Supervisors of Swatara Township*, 16 Pa. C. C. 490.

All the provisions of this section must be complied with in order to make proceedings for the erection of county bridges effective. It is not only necessary to have the concurrence of the grand jury, the court and the county commissioners, but the concurrence of these three bodies must be reasonably continuous: *Commonwealth ex rel. v. Baker*, 212 Pa. 232; *Pittsburgh & Lake Erie R. R. Co. v. Lawrence County*, 198 Pa. 1.

The proper practice in conforming to the above provisions as to recording a county bridge is for the county commissioners to pass a resolution formally expressing their concurrence in the view that the bridge is necessary and too expensive for the township and to file a copy of such resolution in the court of quarter sessions. The mere fact that the commissioners advertised for proposals to erect the bridge is not a compliance with the statutory provisions that the bridge shall be entered of record: *Commonwealth ex rel. v. Bowman*, 218 Pa. 330; *Pittsburgh & Lake Erie R. R. Co. v. Lawrence County*, 198 Pa. 1.

Where one of the petitioners for a county bridge was also a member of the grand jury who acted on the report of viewers and concurred in the report, the action of the grand jury will be set aside and the report of the viewers submitted to another grand jury: *Pottstown Bridge*, 5 Pa. C. C. 334; *Nescoppek Bridge* 21 W. N. C. 426.

Viewers appointed under this section to ascertain whether a bridge should be constructed by the county, cannot lay out a new road to connect with such bridge, unless the order issued to them gives them authority to do so:

Mill Creek Bridge, 17 D. R. 841; *Bridge over Smithfield Creek*, 6 Wh. 363;
Conestoga Bridge, 150 Pa. 541; *Freemansburg Bridge*, 19 Pa. U. C. 588.

1884. Whenever any public road or highway crosses any river, creek, or rivulet over which any bridge has been heretofore or may hereafter be erected, and it becomes necessary to erect a new bridge to take the place of the existing bridge over such river, creek, or rivulet, and the erection of such bridge requires more expense than it is reasonable that one or two or more adjoining townships or boroughs should bear, the court of quarter sessions of the peace of the proper county, on the petition of any of the inhabitants of such township, townships, or boroughs, as aforesaid, shall order a view in the manner provided for in the case of roads; and if, on the report of viewers, it shall appear to the court, grand jury, and commissioners of the county that such bridge is necessary, and its erection would be too expensive for such township, townships, or boroughs, as aforesaid, to bear, it shall be entered on record as a county bridge. Such viewers shall have power, by virtue of their appointment, to change the location of such bridge so that the same may be located and erected in the most suitable place, or at the least expense, or in the best manner; and in case of the change of location of such bridge, shall also report what change in the course or bed of the road to be connected therewith will be necessary, and shall also report the vacation of the old or existing bridge, and the vacation of such portion of the road connecting therewith as they may deem proper. And upon the approval of their report, as aforesaid, such roads shall be altered accordingly.

Sec. 1, Act of May 8, 1909, P. L. 494.

Under this act viewers are authorized to (1) relocate the bridge, (2) vacate the old bridge, (3) vacate such portion of the road connecting therewith as they may deem proper; but it is only in cases of relocation of the bridge that they can exercise the power of vacating the old bridge and road connecting therewith or change the course or bed thereof: *Bethlehem Inter County Road*, 23 D. R. 818; s. c. 14 North C. R. 73.

The power conferred upon viewers to change the course or bed of the road for a county bridge necessarily implies the right to take private property for that purpose, upon making compensation therefor: *Bethlehem Inter County Bridge*, 23 D. R. 818; s. c. 14 North. C. R. 73.

When a township road has become a state road under the provisions of the act of May 31, 1911, P. L. 468, it is the duty of the State Highway Department to build or rebuild any township bridges that form part of such highway: *Pine Creek Township Bridge*, 24 D. R. 461.

1885. When any river, creek or rivulet, forming the boundry between any borough and township of the first or second class, over which it may be necessary to erect a bridge, crosses a public road or highway, and the erection of such bridge requires more expense than it is reasonable that such borough and township should bear, the court of quarter sessions of the proper county, on the petition of any of the

inhabitants of such borough or township, shall order a view, in the manner now provided by law in the case of roads; and if, by the report of the viewers, it shall appear to the court, grand jury and commissioners of the county that such bridge is necessary, and its erection would be too expensive for such borough and township to bear, it shall be entered on record as a county bridge; and the cost of its construction, erection and maintenance shall be borne by the county.

Sec. 1, Act of March 24, 1905, P. L. 50.

Viewers appointed in proceedings begun under the provisions of this act are not authorized to change the location of a bridge, vacate any road or approaches thereto or lay out a new road: *Chartiers Creek Bridge, 37 Super. Ct. 281.*

1886. Where a river, creek or rivulet, over which it may be necessary to erect a bridge, crosses a public road or highway, and the erecting of such bridge requires the erection and construction of an embankment or causeway leading to either end of said bridge, the erection of which embankment or causeway requires more expense than it is reasonable that one or two adjoining townships should bear, the court having jurisdiction shall, upon the representation of the supervisors, or on the petition of any of the inhabitants of the respective townships, order a view in the manner provided for in case of roads, one of the viewers to be a practical engineer; and if on the report of the viewers it shall appear to the court that for the use and enjoyment of said bridge by the public, it is necessary to erect and construct an embankment or causeway as aforesaid, the erection and construction of which would be too expensive for such township or townships, to bear, it shall be entered on record as a county improvement, and constructed as county bridges are erected.

Sec. 1, Act of April 15, 1869, P. L. 46.

1887. Viewers of the site of a bridge appointed as aforesaid, shall have authority by virtue of their appointment, to report also whether any change in the course or bed of the road to be connected therewith, will be necessary, in order to the erection of such bridge at the most suitable place, or at the least expense, or in the best manner; and the same being approved by a majority of the commissioners of the county, and also by the court, such road shall be altered accordingly.

Sec. 37, Act of June 13, 1836, P. L. 551.

The order issued in proceedings under this section should be a double one directing the viewers to ascertain whether the bridge is necessary and the expense too great for the district to bear, and whether a change in the bed of the road is necessary: *Mill Creek Bridge, 17 D. & R. 891; Bridge over Smithfield Creek, 6 Wh. 363; Conestoga Bridge, 150 Pa. 541; Freemansburg Bridge, 19 Pa. C. C. 588.*

1888. Provided, nevertheless, That the viewers shall cause every such variation to be accurately surveyed, and a plot thereof to be made and returned with their report.

Sec. 38, Act of June 13, 1836, P. L. 551.

1889. It shall be the duty of the county commissioners of the several counties of this commonwealth, to re-build and re-construct all bridges heretofore built or that may hereafter be erected by the county commissioners of any of the counties of this commonwealth, whether the same have been or shall be constructed under the general laws of this Commonwealth relating to roads and bridges or under any special act of assembly for that purpose; whenever any such bridge has been or shall hereafter be blown down, destroyed, partially destroyed or swept away by floods, freshets, ice, storm, fire, or other casualty, at the expense of the county wherein such bridge was located; and it shall be the duty of the county commissioners of the respective counties to pay the expenses of re-building any such bridges out of the county treasury in the usual manner: Provided, That after the completion of any such bridge, it shall be subject to view and inspection, as is provided for in the act to which this is a supplement.

Sec. 1, Act of May 5, 1876, P. L. 112, supplementing Act of June 13, 1836, P. L. 551.

The words "other casualty" in this act include the case of a bridge which was broken down by the weight of a team and wagon load of hay. These words refer to any sudden destruction of the bridge causing absolute interruption of travel: *Com. ex rel. v. Northampton County Commissioners*, 19 D. R. 201.

A substantially new county bridge cannot be built by county commissioners without the sanction of a report of viewers, approval of grand jury and court, when the bridge was not destroyed by some sudden or violent casualty, but its destruction was the result of gradual disintegration and decay: *Com. ex rel Shimer v. Commissioners of Northampton County North. C. R. 23.*

1890. For the purpose of carrying into effect the provisions of this act, the county commissioners of the respective counties of this Commonwealth are hereby authorized to borrow any sum of money not exceeding the constitutional limitations, if necessary, for the purposes aforesaid, at a rate of interest not exceeding six per centum, and to issue bonds therefor in sums not exceeding five hundred dollars each.

Sec. 2, Act of May 5, 1876, P. L. 112.

1891. The several counties of this Commonwealth are hereby authorized and empowered,—whenever the county commissioners of such county, or a majority of them, shall, by resolution, decide so

to do, and upon the approval thereof by a grand jury and by the court of quarter sessions in the manner hereinafter provided,—to locate, lay out, open, construct, and maintain public bridges, whether wholly or partly within any city, borough, or township therein, across any river or stream dividing or separating any part of said county from any other part thereof; together with such bridge approaches, viaduct, or other approaches as the county commissioners, or a majority of them, may in their judgment deem necessary or convenient for the purpose of connecting any such bridge with the existing streets or public roads in such cities, boroughs, or townships; and, to that end, to take, enter upon, and appropriate property and rights of property of all kinds, whether devoted to a public or private use, for the purposes aforesaid, and for the necessary slopes, piers, walls, abutments, filis, and embankments; and to enter upon or over any street, public highway, or public road, in such cities, boroughs, or townships in the manner hereinafter provided.

Sec. 1, Act of May 24, 1917, P. L. 276.

1892. Whenever the county commissioners of any county shall resolve to exercise any of the powers conferred by section one hereof, they shall cause to be prepared plans and surveys showing the location of the proposed bridge and its approaches, and the property or rights of property affected thereby, together with any streets or public roads in any city, borough, or township proposed to be used in connection therewith; and they shall present the same, together with their petition on behalf of said county, to the court of quarter sessions of such county, praying for authority to locate, lay out, open, and construct the same; which petition shall briefly describe the location and the estimated cost thereof, or, if the method of construction has not been fully determined, the estimated cost thereof for each alternative method of construction proposed.

Upon the filing of any such application or petition, the court shall fix a time for the hearing of the same by, and refer the same to, the grand jury. Notice of the time, place, and purpose of said hearing shall be given by an advertisement, published once a week for three successive weeks, in at least one newspaper of general circulation in such county, and by handbills posted in conspicuous places along or in the neighborhood of the proposed bridge and its approaches, or otherwise as the court shall direct, having regard to the circumstances of the case.

If the grand jury by a majority vote shall approve said application or petition, it shall thereupon certify its approval to said court; whereupon the court shall make an order fixing a time, not less than ten days thereafter, for the filing of exceptions thereto. Upon the hearing thereof the court may, for proper cause shown, disapprove

of said application; otherwise, it shall make an order approving the location, and the plans and surveys therefor, and authorize such county to construct such bridge and its approaches, and to let a contract or contracts therefor, under specifications to be prepared by the county engineer or other proper county authority; and thereupon the said bridge and its approaches shall be deemed to be laid out and opened in accordance with the surveys and plans accompanying said petition.

Where the proposed bridge crosses any navigable stream or other public water, or the property, rights of property, or rights of way of any railroad or other public service corporation, and, by reason thereof, the approval of any State or Federal officer, board, or body is required as to the location and construction of such a bridge or its approaches, such county shall be deemed to have full and complete authority to construct such bridge in such other location and in such other manner as may be necessary to comply with the conditions prescribed by such officer, board or body in granting such approval: Provided, The county commissioners of such county be of the opinion, and by resolution duly adopted by a majority vote so decide, that the bridge as thus changed is necessary for the convenience of the traveling public, and will accommodate substantially the same traveling public as the bridge would have done if it had been constructed at the location and in the manner originally provided. Upon the adoption of any such resolution, and prior to the construction of such bridge, and the entry upon and taking of property for that purpose, such county, through its county commissioners, shall present its petition to the court of quarter sessions of said county, briefly setting forth the facts as to the obtaining of such approval, and the changes made in consequence thereof, and the adoption of such resolution, together with plans and surveys showing the new location and manner of construction and an estimate showing the cost of the construction of such bridge as thus changed, and if the proceedings shall appear to be regular, the court shall make an order fixing a time, not less than twenty days thereafter, for the filing of exceptions thereto. Notice of the time and place of hearing on said exceptions shall be given by advertisement, published once a week for two successive weeks, in at least two newspapers of general circulation in such county, and by handbills posted in conspicuous places along or in the neighborhood of the proposed bridge and its approaches, or otherwise as the court shall direct, having regard to the circumstances of the case. Upon the hearing thereof the court may, for proper cause shown, disapprove of said petition; otherwise, it shall thereupon make a decree authorizing and empowering said county to construct such bridge in accordance with such new plans and surveys, and there-

upon such bridge shall be deemed to have been laid out and opened in accordance with such plans and surveys. The provisions of this act shall apply to proceedings now pending, as well as those hereafter begun.

Sec. 2, Act of May 24, 1917, P. L. 276, as amended by Sec. 1, Act of June 7, 1919, P. L. 414.

1893. For the purpose of making the necessary preliminary surveys, in order to prepare said plans and estimates, the county commissioners of the several counties and the persons by them employed for such purpose shall have the right to enter upon private or public property, and to designate by proper marks upon the ground the line and location of any such proposed bridges and approaches.

Sec. 3, Act of May 24, 1917, P. L. 276.

1894. The county commissioners, pursuant to a resolution duly adopted by a majority of the board, may agree with the owners of property, rights of property, or rights of way of any railroad or any public service corporation, affected thereby, as to the amount of damages occasioned to any person for property taken, injured, or destroyed for the purposes aforesaid; which agreement the county commissioners shall report to the court of quarter sessions of said county, and upon the approval thereof by such court, such damages shall be payable by the county out of the general county funds or other funds provided for that purpose.

Sec. 4, Act of May 24, 1917, P. L. 276, as amended by Sec. 2, Act of June 7, 1919, P. L. 414.

1895. In case the compensation for the damages has not been agreed upon, any court of common pleas of the proper county, or any law judge thereof in vacation, on application thereto by petition by said county or any person interested, shall appoint three discreet and disinterested freeholders as viewers, and appoint a time, not less than twenty nor more than thirty days thereafter, when said viewers shall meet upon the line of the proposed bridge and its approaches, and view the same and the premises affected thereby. The said viewers shall give at least ten days' notice of the time of their first meeting, by publication in one or more newspapers of the county in which it is situate, and by handbills posted in conspicuous places in the vicinity of the proposed bridge and its approaches, or otherwise as the said court shall direct, having due regard to the circumstances of the case.

Sec. 5, Act of May 24, 1917, P. L. 276.

1896. The said viewers, having been duly sworn or affirmed faithfully, justly, and impartially to decide and true report to make con-

cerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance of the provisions of this act; and, having viewed the premises and examined the property connected with and affected by the proposed bridge and its approaches, shall hear all parties interested and their witnesses; and, having a due regard to, and making just allowance for, the advantages which may have resulted, or which may seem likely to result, to the owner or owners of said lands or materials, in consequence of the locating, laying out, opening, maintenance, and construction of said bridge and its approaches, shall estimate and determine the damages for property taken, injured, or destroyed, and to whom the same is payable; and, having so estimated and determined the damages, they shall prepare a schedule thereof, and give notice to all parties to whom damages are allowed of a time, not less than ten days thereafter, and of a place where said viewers shall meet and exhibit said schedule, and hear all exceptions thereto and evidence. Notice of the time and place of said meeting shall be given, in the manner provided by law for the service of summons in a personal action, upon all parties allowed damages as shown by said schedule, if the said parties can be found in the county; or upon an adult person, if any, residing upon the property affected, in case the owner or reputed owner cannot be found; and, to all others, by publication in the newspaper or newspapers in which the first notices of said view were published. When no service is made upon the owner, reputed owner, or upon an adult person residing upon the property affected, said notice, where publication thereof has also been made, shall be deemed to have been properly served if tacked or conspicuously posted on the premises. The court may provide by whom the notice provided by this act shall be posted, given, and served, and fix the compensation for said service. After making whatever changes are deemed necessary, the said viewers shall make report to the court, showing the damages allowed in each case, and file therewith a plan showing the improvement and the properties taken, injured, or destroyed. When said report is filed, notice thereof shall be given by publication once in the newspaper or newspapers in which first notices of said view were published. Said notice shall state the date of filing of the report, and shall contain a schedule of the damages shown therein; and shall further state that, unless exceptions thereto be filed within thirty days from the date of filing, the said report will be confirmed absolutely.

Sec. 6, Act of May 24, 1917, P. L. 276.

1897. The viewers provided for in this act may be appointed either before or at any time after the entry upon, taking, appropri-

tion, or injuring of any property for said purposes. The cost of said viewers and all court costs incurred, including all advertising and notices in connection therewith, shall be paid by such county; and each of said viewers shall be entitled as compensation, unless otherwise provided by law, to a sum not exceeding five dollars per day for each and every day necessarily employed in the performance of the duties herein prescribed.

Sec. 7, Act of May 24, 1917, P. L. 276.

1898. In all cases where the parties have not agreed upon the amount of damages claimed, or where, by reason of the absence or legal incapacity of the owner or owners, no such agreement can be made for the lands, property, or materials, to be taken, occupied, or injured, such county may tender sufficient security to the party claiming or entitled to any damages, or to the attorney or agent of any person absent, or to the agent or other officers of a corporation, or to the guardian or committee of any one under legal incapacity; the conditions of which shall be that the said county shall pay or cause to be paid such amount of damages as the party shall be entitled to receive, after the same shall have been agreed upon by the parties or assessed in the manner provided for in this act. In case the party or parties claiming damages refuse or do not accept the security so tendered, the said county shall then give the party, his or their agent, attorney, guardian, or committee, a written notice of the time when the same will be presented for filing in the court; and thereafter the said county may present said security to the court of common pleas of the county where the lands or other property are situated, and, if approved, the security shall be filed in said court for the benefit of those interested, and recovery may be had thereon for the amount of damages assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question, and, upon the approval of said security, said county may proceed with the improvement.

Sec. 8, Act of May 24, 1917, P. L. 276.

1899. Upon the report of said viewers, or any two of them, being filed in said court, any party interested, may, within thirty days thereafter, file exceptions to the same; and the court shall have power to confirm said report, or to modify, change, or otherwise correct the same, or refer the same back to the same or new viewers, with like power as to their report. When said report is first filed in court the prothonotary thereof shall mark the same "confirmed nisi," and, in case no exceptions are filed thereto within said thirty days, he shall enter a decree (as of course) that said report is confirmed absolutely. Within thirty days after the confirmation, modification,

changing, or correcting of said report, any interested party may appeal from said decree to the superior Court or to the Supreme Court, as the case may be. And within thirty days after said report is filed in court, as aforesaid, such county, and any party whose property is taken, injured, or destroyed, may appeal to the court of common pleas, and demand a trial by jury according to the course of the common law. Every appellant shall state in the appeal the grounds upon or for which the appeal is taken, and the same shall be signed by the party or parties taking the appeal, or by his or their agent or attorney; and shall be accompanied by an affidavit of the party appellant, or of his or their agent or attorney that the appeal is not taken for the purpose of delay, but because the appellant firmly believes that injustice has been done. In case the party appellant does not obtain a verdict more favorable than was the report of the viewers, as finally confirmed, modified, or changed, the said appellant shall not recover any costs on the appeal. The said court of common pleas shall have power to order what notices shall be given in connection with any part of said proceedings, and make all such orders as it may deem requisite, and may, by rule or otherwise, prescribe the form of the pleadings. After verdict and final judgment either party may have an appeal to the Superior or Supreme Court, as in other cases.

Sec. 9, Act of May 24, 1917, P. L. 276.

1900. In case the county commissioners, or a majority of them, of any such county, shall repeal or rescind any resolution passed, or discontinue any proceeding taken, providing for any such bridge or its approaches, prior to the entry upon, taking, appropriation, or injury to any property or materials, and within thirty days after the filing of the report of viewers assessing damages, the said county shall not thereafter be liable to pay any damages which have been or might have been assessed, but all costs upon any proceedings had thereon shall be paid by said county, together with any actual damage, loss, or injury sustained by reason of such proceedings.

Sec. 10, Act of May 24, 1917, P. L. 276.

1901. All damages found, agreed upon, or awarded for or on account of the location, laying out, opening, and construction of any such public bridge, and its approaches and appurtenances, and all costs and expenses incurred in connection therewith, shall be paid by such county, out of the general county funds, or from such other funds as may be set apart or appropriated for that purpose.

Sec. 11, Act of May 24, 1917, P. L. 276.

1902. Upon the approval of any application to construct any such bridge, and its approaches and other appurtenances, the county commissioners of such county are authorized and empowered to advertise and solicit proposals for the construction thereof, in the manner provided by law for the letting of county contracts, and to let a contract or contracts therefor to the lowest responsible bidder. No contract shall be awarded for any such work unless proper security shall be given for the faithful performance thereof by the person or persons to whom the contract shall be awarded, with proper surety, to be approved by the county commissioners of such county, which surety shall be equal in amount to at least fifty per cent of the contract price therefor.

Sec. 12, Act of May 24, 1917, P. L. 276.

1903. The several counties, through their county commissioners or a majority of them, are hereby authorized and empowered to make and enter into contracts or leases with any street-railway, telegraph, telephone, or corporation, or persons, desiring to make use of said bridge and its approaches for other than ordinary public foot or vehicle traffic, and with the successors and assigns of such companies for the concurrent use of such portion of said public bridge and approaches as shall not substantially impair or restrict the public use and enjoyment thereof, upon such terms and conditions as shall be agreed upon, or to charge tolls or rentals for such special use; but no such contract or lease shall be entered into for a longer period than twenty years; and no such contract or lease shall be entered into by any such county unless such contract or lease shall be first approved by the Public Service Commission of this Commonwealth.

Sec. 13, Act of May 24, 1917, P. L. 276.

1904. The several counties of this Commonwealth are hereby authorized and empowered to appropriate, and pay out of the general county funds, all moneys necessary for said purposes; and to levy, assess, and collect taxes, for the purposes aforesaid, on all real and personal property within said county now or hereafter taxable for county purposes, in addition to all other taxes.

Sec. 14, Act of May 24, 1917, P. L. 276.

1905. The several counties are further authorized and empowered pursuant to a resolution adopted for that purpose by a majority of the county commissioners of such county, to borrow money and to incur indebtedness for the purposes aforesaid, to an amount not exceeding the limit of indebtedness prescribed by the Constitution of this Commonwealth, in compliance with the laws regulating the manner of increasing such indebtedness, and also to fund any indebt-

edness incurred for the purposes aforesaid; and to issue, as evidences of such indebtedness, registered and coupon bonds, or either of them, payable within thirty years from the date of their issue, and bearing interest at a rate not exceeding six per centum per annum, payable semi-annually, which bonds shall not be sold at less than their par value and accrued interest; and to levy and collect taxes on all taxable property in such county, in addition to all other taxes, for the purpose of paying such indebtedness and interest thereon. Any county incurring such indebtedness shall, at or before the time of incurring the same, make provision for a sinking-fund to pay at maturity all indebtedness so incurred and interest thereon.

Sec. 15, Act of May 24, 1917, P. L. 276, as amended by Sec. 3, Act of June 7, 1919, P. L. 414.

1906. Should any board of county commissioners, in the exercise of the powers herein conferred, deem it necessary or advisable, to enter upon any street or public highway in any city or borough, or to take any other action affecting the property, rights, or authority of any such city or borough, for the purpose of constructing or maintaining any such bridge, with its approaches and other appurtenances, or otherwise, the consent thereto of such city or borough, by ordinance, shall be first had and obtained.

Sec. 16, Act of May 24, 1917, P. L. 276.

1907. Any city or borough, wherein any such bridge is proposed to be located or erected, shall have the power and authority to agree with said county to bear a portion of the cost of the locating, laying out, opening, and construction of any such bridge and its approaches and appurtenances, and to provide the approach therefor within the limits of the respective city or borough, and to bear the cost of the maintenance of any approach within the respective city or borough, as shall be agreed upon between any such county, city, or borough. All such agreements shall be entered into in writing, and at least one executed copy shall be furnished to each county, city, and borough becoming a party thereto.

Sec. 17, Act of May 24, 1917, P. L. 276.

1908. Any bridge erected under the terms of this act shall be a county bridge, and the duty of maintaining the same shall, except as otherwise herein provided, devolve upon such county, and the expense thereof shall be paid out of the general county funds provided for that purpose.

Sec. 18, Act of May 24, 1917, P. L. 276.

1909. Whenever different parts of any city within any county of this Commonwealth, or any part of such city and any township bordering thereon, are separated therefrom by any intervening valley or ravine, and the county commissioners of such county, or a majority of them, shall, by resolution, deem it expedient and necessary that such city construct a public bridge for the purpose of connecting the territories thus separated, and that such bridge will be of substantial advantage and benefit to the taxable inhabitants of the township bordering hereon or townships adjacent thereto, and that it is reasonable and proper that such county participate with such city in the cost and expense of the laying out and construction of such bridge,—then, in that event, such county shall have the power to contract with such city for the laying out and construction by such city of such bridge, and to pay to such city such portion of the cost thereof as the county commissioners shall deem reasonable and proper and shall agree to pay, and to appropriate money, levy taxes, and to incur indebtedness therefor.

Sec. 1, Act of July 8, 1919, P. L. 761.

1910. The several counties are further authorized and empowered, pursuant to a resolution adopted for that purpose by a majority of the county commissioners of such county, to borrow money and to incur indebtedness, for the purposes aforesaid, to an amount not in excess of the limit prescribed by the Constitution of this Commonwealth and in compliance with the acts regulating the manner of increasing indebtedness; and also to fund any indebtedness incurred for the purposes aforesaid, and to issue as evidences of such indebtedness registered or coupon bonds, or either of them, payable within thirty years from the date of their issue and bearing interest at a rate not exceeding six per centum per annum payable semi-annually, which bonds shall not be sold at less than par and accrued interest; and to levy taxes on all taxable property in such county, in addition to all other taxes, for the purpose of paying such indebtedness and interest thereon. Any county incurring such indebtedness shall, at or before the time of incurring the same, make provision for a sinking-fund to pay at maturity the indebtedness so incurred and interest thereon.

Sec. 2, Act of July 8, 1919, P. L. 761.

1911. When the building of a county bridge over a river, creek, or rivulet, railway or canal, has been found necessary by report of viewers, by the court, and by the grand jury, under proceedings as provided by existing laws, and it has also been found, in like manner, that the erection of such bridge will require more expense than it is reasonable that the one or more adjoining townships or city of the

third class should bear, that whenever the county commissioners do not deem it advisable to enter such bridge on record as a county bridge, but shall consider it proper to assist such township or townships, or such city of the third class, in building the same, they are hereby authorized and empowered, from and out of the county funds, to either build such bridge, or any portion or portions thereof, or furnish such township or townships, or city of the third class, the whole or part of the money necessary to build it, without entering such bridge on record as a county bridge.

Sec. 1, Act of June 13, 1879, P. L. 146, as amended by Sec. 1, Act of June 15, 1911, P. L. 970.

Under this act, where the county commissioners assume for the county the entire burden of building a bridge, the county is bound to build the approaches to the bridge, so as to make it completely accessible to public travel: *Com. v. Westfield Borough*, 11 Pa. C. C. 369, s. c. 1 D. R. 495.

This act repeals local laws establishing a different rule: *Westfield Borough v. Tioga Co.*, 150 Pa. 152.

Under this act the county commissioners can make binding contracts by which the township interested may agree to share the total expense: *Commonwealth ex rel. v. Supervisors of Swatara Township*, 16 Pa. C. C. 490.

1912. The county commissioners shall keep a record of all their proceedings in such cases, and such bridges shall be maintained, kept in repair and rebuilt, when necessary, by the respective township or townships, and the county shall in no event be liable for the same.

Sec. 2, Act of June 11, 1879, P. L. 146.

Under this act the county commissioners alone determine the important question of the extent to which the county funds shall be appropriated after the necessity for such decision has been brought before them by proper proceedings. The court has no exclusive right to determine that a bridge shall be a county bridge: *Loyalhanna Creek Bridge*, 45 Pa. C. C. 311.

1913. Whenever a public bridge has been built or maintained by any borough or township, or both, or by any two townships, and used by the public for travel, across a river, within any borough or separating any borough and township, or separating any two townships, within the commonwealth of Pennsylvania, the county commissioners of any county wherein such bridge is, may take the same as a county bridge whenever the proper authorities, having the maintenance, supervision and control of such bridge, shall tender the same to said county commissioners, free and without charge therefor; and any such bridge, so taken, shall thereafter be maintained and kept in repair as a county bridge.

Sec. 1, Act of April 27, 1903, P. L. 323.

1914. When a public road is laid out and confirmed by the court, and not opened, leading to either end of a county bridge, across any

river in this commonwealth, upon a petition of citizens of the city, town, borough or township through which the said road is located, setting forth that the expenses of the construction is too burthen-some to the taxpayers of the said city, town, borough or township, that thereupon the court of quarter sessions of the proper county may, upon the filing of the said petition, order the county commissioners to prepare plans of said public road, not exceeding one-fourth mile in length, from the end of such bridge, which plans shall be submitted to the court, and such time shall be fixed for filing exceptions to said proceedings as the court shall deem proper; and if no sufficient cause be shown to the contrary, the said court, upon approval thereof, shall then authorize the county commissioners to construct the said road, according to the plans and survey accompanying said proceedings; and upon the approval of the same by the county commissioners, or a majority of them, they shall proceed to open such road at the expense of the county: Provided, That the term "river" in this act shall mean any stream of water ten hundred feet wide, or over.

Sec. 1, Act of May 21, 1901, P. L. 268.

1915. From and after the passage of this act, it shall be the duty of the county commissioners of the several counties of this commonwealth to repair all county bridges, heretofore erected or to be hereafter erected by the county, and to pay the expenses of such repairs out of the county treasury, in the usual manner.

Sec. 1, Act of March 30, 1905, P. L. 81.

1916. It shall be lawful for the undertaker of any public bridge, to enter upon the lands and inclosures near to the place where such bridge is to be built, for the purpose of searching for and procuring the materials necessary for the building of such bridge, in like manner and with like authority as is hereinbefore provided in behalf of the supervisors of the public roads in the like case.

Sec. 48, Act of June 13, 1836, P. L. 551.

1917. If the undertaker of such bridge and the owner of such materials cannot agree upon the sum to be paid for the damages which may be done by the taking of such materials, such damages shall be ascertained in the manner provided in the case of materials taken by the supervisors of the public roads.

Sec. 49, Act of June 13, 1836, P. L. 551.

1918. Provided, nevertheless, That the damages shall be ascertained and paid, or secured to be paid, to the satisfaction of the

owner of such materials, before the same may be dug, quarried or removed by such undertaker.

Sec. 50, Act of June 13, 1836, P. L. 551.

1919. In all cases where the railroad tracks of any company shall, for the purpose of avoiding or eliminating grade crossings, be so constructed as to cross any public highway above grade, by means of a bridge, viaduct, or any other structure, the abutments, piers, or other supports of such bridge shall be so built as to maintain a minimum width on said highway of twenty-four feet in the clear, and so as to maintain a minimum height of fourteen feet in the clear; and that where any such railroad shall, for like purpose, cross any public highway below grade, the bridge or viaduct crossing such railroad shall have a width of not less than twenty-four feet in the clear; and all railroads are hereby authorized and permitted to construct such piers, abutments, bridges, and viaducts as herein provided.

Sec. 1, Act of June 10, 1911, P. L. 867.

1920. No bridge, frame or device whatsoever shall, at any time to come, be made, erected, upheld, sustained or repaired, over any creek or river within this province, navigable for any sloop, shallop, flat, or other craft, that shall or may in any wise stop or hinder the navigation of any such sloop, shallop, flat or other craft, or float of logs: any law, custom or usage to the contrary thereof in any wise notwithstanding.

Sec. 2, Act of August 14, 1725, 1 Sm. L. 168.

This section applies only to bridges erected without the authority of law: *Clarke v. Birmingham and Pittsburgh Bridge Co.*, 41 Pa. 147.

A bridge company may be responsible to an individual for an injury resulting from a wanton abuse of its right, and the Commonwealth may complain that the piers are injudiciously located: *Dugan v. Monongahela River Bridge Co.*, 27 Pa. 303; *Monongahela Bridge Co. v. Kirk*, 46 Pa. 112; *Jutte v. Keystone Bridge Co.*, 146 Pa. 400.

This applies to future traffic as well as to that existing when the act was passed: *Dugan v. Monongahela River Bridge Co.*, 27 Pa. 303; *Commonwealth v. Monongahela Bridge Co.*, 29, P. L. J. 126.

1921. Nothing herein contained shall be construed to forbid or hinder the maintaining and repairing the drawbridge hereinbefore particularly mentioned, or any other bridge erected by public authority, or making of dams, mounds or tide banks, for the draining of low grounds, and improving of meadows, by the owners or owner of the greater part of the lands, low grounds, or meadows, included within the same dams, mounds or tide banks, anything herein contained to the contrary in any wise notwithstanding.

Sec. 3, Act of Aug. 14, 1725, 1 Sm. L. 168.

1922. Whenever authority has been given by the State Highway Department to township supervisors, under existing laws, or laws that may hereafter be enacted, for the construction, repair, alteration, or maintenance of any township bridge, it shall not be necessary for such township supervisors to procure permits from any other department consenting to the construction, repair, alteration, or maintenance of such bridge. This act shall not repeal or modify any of the provisions of the act of the twenty-sixth day of July, one thousand nine hundred and thirteen (Pamphlet Laws, one thousand three hundred and seventy-four), known as The Public Service Company Law.

Sec. 1, Act of July 18, 1917, P. L. 1074.

1923. It shall be unlawful for any person or persons to drive, or cause to be driven, on or over any public bridge of this Commonwealth, any power-driven vehicle, with a gross weight of four tons or more, at a greater rate of speed than six miles per hour.

Sec. 1, Act of June 28, 1917, P. L. 646.

1924. Any person offending against any of the provisions of this act shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be sentenced to pay a fine of not exceeding one hundred dollars, or to undergo an imprisonment not exceeding thirty days, or both or either, in the discretion of the court.

Sec. 2, Act of June 27, 1917, P. L. 646.

CHAPTER XXXIV.

SIDEWALKS.

For other provisions relating to this subject, see sections 950 to 1042 inclusive.

1925. It shall be lawful for boroughs and townships to establish a grade or grades for footways or sidewalks, which grade or grades may be separate and apart from the grade or grades established for the cartway or roadway.

Sec. 1, Act of July 7, 1919, P. L. 732.

1926. Whenever heretofore any township of the first class of the State has (pursuant to petition of the majority of property owners in interest and number abutting upon the line of the improvement), authorized, by any act, ordinance, resolution or contract passed or made, the grading, paving, curbing of and the laying of sidewalks upon, any street, lane, or alley, or part thereof; and, in pursuance of such act, ordinance, resolution, or contract, work or labor has been done or is being done, or material furnished or is being furnished, or private property has been or is being taken, injured, or destroyed, and properties in the neighborhood of such improvement have been, or will be when completed, peculiarly benefited by the same; now by this act said improvements are made valid and binding, and any township of the first class of the state is hereby authorized to ascertain, levy, and collect such costs, damages, and expenses in the manner following:

Said township of the first class, or any person or persons interested, may, at any time after such work or labor has been done, or material furnished, or damage done, present its, her, his, or their petition in any court of common pleas of the proper county, or to any law judge thereof in vacation; and the court shall appoint three discreet and disinterested persons as viewers, and appoint a time, not less than twenty nor more than thirty days thereafter, when said viewers shall meet upon the line of the improvement and view the same and the premises affected thereby. The said viewers shall give at least ten days' notice of the time of their first meeting, by publication in one or more newspapers of the township of the first class, or of the county in which it is situated, and by handbills posted upon the premises, or otherwise, as the said court shall direct, having regard to the circumstances of the case.

Sec. 1, Act of June 9, 1911, P. L. 733.

1927. The said viewers, having been duly sworn or affirmed faithfully, justly, and impartially to decide and a true report to make concerning all matters and things to be submitted to them, or in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises and examined the property, shall hear all parties interested and their witnesses; and shall estimate and determine the value of property taken, injured, or destroyed, to whom the same is payable; and having so estimated and determined the damages, together with the benefits, as hereinbefore mentioned, they shall prepare a schedule thereof, and give notice to all parties to whom damages are allowed or upon whom assessments for benefits are made of a time, not less than ten days thereafter, and of a place, where said viewers shall meet and exhibit said schedule, and hear all exceptions thereto and evidence thereon. Notice of the time and place of said meeting shall be given in the manner provided by law for the service of a summons in a personal action, upon all parties allowed damages or assessed benefits, as shown by said schedule, if the parties can be found in the municipality; or upon an adult person residing upon the property affected by the assessment, in case the owner or reputed owner cannot be found; and to all other persons, by publication in the newspaper in which the first notice of said view was published. When no service is made upon the owner, reputed owner, or upon an adult person residing upon the property affected, said notice, were publication thereof has also been made, shall be deemed to have been properly served if tacked or conspicuously posted upon the premises. After making whatever changes are deemed necessary, the said viewers shall make report to the court, showing the damages and benefits allowed and assessed in each case, and file therewith a plan showing the improvement, the properties taken, injured, or destroyed thereby, and the properties thereby benefitted. When said report is filed notice shall be given by publication once in the newspaper or newspapers publishing the notice provided for in section one of this act. Said notice shall state the date of the filing of the report, and shall contain a schedule of the damages and benefits as shown therein, and shall further state that, unless exceptions thereto be filed within thirty days from the date of filing, the said report will be confirmed absolutely.

Sec. 2, Act of June 9, 1911, P. L. 733.

1928. The payment of damages sustained by the making of the improvements aforesaid may be made, either in whole or in part, by said township of the first class; or, in whole or in part, by assessments upon the property benefitted by such improvement, as said

viewers may determine and the court approve; and in the latter case, the viewers appointed, having first estimated and determined the damages apart from benefits, shall also assess said damages, or so much thereof as they may deem just and reasonable, upon the properties peculiarly benefited by the improvements, including in the said assessment all property for which damages have been allowed, if in their judgement such properties will be benefited thereby, and shall report the same to said court. The total assessment for benefits shall not exceed the total damages awarded and agreed upon.

Sec. 3, Act of June 9, 1911, P. L. 733.

1929. The viewers provided for in the foregoing section may be appointed at any time within one year from the date of the passage of this act. The costs of the viewers and all court costs incurred in the proceedings aforesaid shall be defrayed by said township of the first class, and each of said viewers shall be entitled to a sum not exceeding five dollars per day for every day necessarily employed in the performance of the duties herein prescribed.

Sec. 4, Act of June 9, 1911, P. L. 733.

1930. Upon the report of said viewers, or any two of them, being filed in said court, any party interested may, within thirty days thereafter, file exceptions to the same; and the court shall have power to confirm said report, or to modify, change, or otherwise correct the same, or change the said assessment made therein, or refer the same back to the same or new viewers, with like power as to their report. When said report is first filed in court, the prothonotary thereof shall mark the same confirmed nisi; and, in case no exceptions are filed thereto within thirty days, he shall enter decree (as of course) that the said report be confirmed absolutely. Within thirty days after the confirmation, modification, changing, or correction of any report, any interested party may appeal from the said decree to the Superior Court or to the Supreme Court, as the case may be. The said report when and as finally confirmed shall be conclusive as to any assessments made therein to pay the costs, damages, and expenses of said improvement. Within thirty days after said report is filed in court, as aforesaid, any party whose property is taken, injured, or destroyed, or who is assessed benefits to pay damages for property taken, injured, or destroyed, may appeal to the court of common pleas, and demand a trial by jury according to the course of the common law. Upon the trial of any such appeal in court, the report of viewers, as finally approved, confirmed modified, or changed by the court, shall be prima facie evidence of the benefits as therein mentioned; and in case the party appellant does not obtain a verdict more favorable than was the report of viewers, as finally confirmed modified, or changed, the said appellant shall not recover any costs

on the appeal. No appeal under this act shall prevent the filing of liens by any township of the first class for any assessment made by said report; but, upon the final determination of the issue, the court shall make such order as to lien or liens filed as shall appear right and proper.

Sec. 5, Act of June 9, 1911, P. L. 733.

1931. In all cases where sidewalks have been constructed in unincorporated towns and villages, or upon any public road, it shall not be lawful for any person to ride, lead or drive any beast of burden thereon; and if any person shall wilfully ride, lead or drive, or cause to be driven, any beast of burden thereon, such person shall, for every such offense, forfeit and pay a sum of not less than five, nor more than ten dollars, to be sued for and recovered as fines and pecuniary penalties are recovered under the provisions of the 75th section of the act of June 13th, 1836, entitled "An act relating to roads, highways and bridges:" Provided, That this act shall not apply to any person leading, riding or driving any beast of burden over or on any sidewalk constructed upon or abutting on his own property.

Act of April 6, 1868, P. L. 67.

CHAPTER XXXV.

SEWERS AND DRAINS.

For other provisions relating to this subject, see sections 1070 to 1141 inclusive.

1932. From and after the passage of this act, it shall be lawful for any municipality, in which any corporation created and existing under and by virtue of the laws of this Commonwealth, or any person or persons or unincorporated association, have constructed and are maintaining or may hereafter construct and maintain, sewers, culverts, conduits, and pipes, with the necessary inlets and appliances, for surface, under surface and sewage drainage, to become the owners of such sewers, culverts, conduits, and pipes, with the necessary inlets and appliances, for surface, under surface, and sewage drainage, and the property of such company, person or persons, or unincorporated associations, by paying therefor the actual value of the same at the time of taking by the municipality.

Sec. 1, Act of April 19, 1901, P. L. 82, as amended by Sec. 1, Act of July 21, 1913, P. L. 865.

Query: Does this act apply to townships?

In a proceeding to ascertain the value of a sewerage system, under the authority of this act, proof of the original cost of construction, while not controlling, is competent evidence to be considered as an element in ascertaining the present value: *Borough of Hanover v. Hanover Sewer Company*, 251 Pa. 95, reversing 28 York, 77; see also *Borough of Hanover's Petition*, 26 York 153, 27 York 133, 5 M. L. R. 204.

1933. In case of disagreement as to the amount to be paid, the same shall be ascertained in the same manner as damages are now ascertained for private property taken, injured or destroyed by reason of municipal improvements, under the act of the General Assembly of the Commonwealth of Pennsylvania, approved sixteen May, one thousand eight hundred and ninety-one (Pamphlet Laws, 75), entitled "An act in relation to the laying out, opening, widening, straightening, extending, or vacating streets and alleys, and the construction of bridges in the several municipalities of this Commonwealth, the grading, paving, macadamizing or otherwise improving streets and alleys, providing for ascertaining the damages to private property resulting therefrom, the assessment of the damages, costs and expenses upon the property benefited, and the construction of sewers and payment of damages, costs and expenses thereof, including damages to private property resulting therefrom."

Sec. 2, Act of April 19, 1901, P. L. 82.

1934. That whenever the amount to be paid by any municipality to any corporation, person or persons, or unincorporated association, for the acquisition of sewers, culverts, conduits and pipes, with the necessary inlets and appliances, under the Act of the General Assembly, approved the nineteenth day of April, Anno Domini one thousand nine hundred and one (Pamphlet Laws, eighty-two), shall have been ascertained in the manner provided in said act, it shall be lawful for the court of common pleas of the proper county, or any law judge thereof in vacation, on application thereto by petition by said municipal corporation or any person interested, to appoint viewers, who shall assess the costs and expenses of the sewers, culverts, conduits and pipes, with the necessary inlets and appliances, acquired by said municipality, upon the property benefited, according to benefits, if sufficient can be found; but, if not, then the deficiency when finally ascertained shall be paid by the municipal corporation; and the proceedings of said viewers, and the proceedings of their report, shall be as provided in said act of May sixteen, one thousand eight hundred and ninety-one (Pamphlet Laws, seventy-five), for viewers and reports of viewers in cases of property taken, injured, or destroyed.

Sec. 3, Act of April 19, 1901, P. L. 82, as amended by Sec. 2, Act of July 21, 1913, P. L. 865.

CHAPTER XXXVI.

MOTOR AND OTHER VEHICLES.

* (a) Motor Vehicles.

1935. The fee for the registration of a motorcycle shall be three (\$3) dollars, and for the registration of a bicycle with a motor attached, two (\$2) dollars.

The fee for registration of motor vehicles, except such as are equipped with metal tires, when registered prior to August first of any year, shall be at the rate of forty (40) cents for each horsepower or fractional part thereof; Provided, That the minimum fee shall be ten (\$10) dollars.

The fees for the registration of commercial motor vehicles the chassis of which weighs less than two thousand (2,000) pounds shall be on the basis of horsepower: Provided, That the minimum fee shall be fifteen (\$15) dollars.

Commercial vehicles, with pneumatic tires, the chassis of which weighs two thousand (2,000) pounds or more, shall be divided into seven (7) classes.

The fees for each such vehicle in class AA, the chassis of which weighs two thousand (2,000) pounds and less than three thousand (3,000) pounds, shall be twenty-four (\$24) dollars.

The fee for each such vehicle in Class A, the chassis of which weighs three thousand (3,000) pounds and less than four thousand (4,000) pounds, shall be thirty-two (\$32) dollars.

The fee for each such vehicle in class B, the chassis of which weighs four thousand (4,000) pounds and less than five thousand (5,000) pounds, shall be forty (\$40) dollars.

The fee for each such vehicle in class C, the chassis of which weighs five thousand (5,000) pounds and less than six thousand (6,000) pounds, shall be fifty-six (\$56) dollars.

The fee for each such vehicle in class D, the chassis of which weighs six thousand (6,000) pounds and less than seven thousand five hundred (7,500) pounds, shall be eighty (\$80) dollars.

The fee for each such vehicle in class E, the chassis of which weighs seven thousand five hundred (7,500) pounds, and less than eight thousand five hundred (8,500) pounds, shall be one hundred (\$100) dollars.

The fee for each such vehicle in class F, the chassis of which weighs over eight thousand five hundred (8,500) pounds, shall be one hundred forty (\$140) dollars.

Commercial vehicles, with solid rubber tires, the chassis of which weighs two thousand (2,000) pounds or over, shall be divided into seven (7) classes.

The fee for each such vehicle in class AA, the chassis of which weighs two thousand (2,000) pounds and less than three thousand (3,000) pounds, shall be thirty (\$30) dollars.

The fee for each such vehicle in class A, the chassis of which weighs three thousand (3,000) pounds and less than four thousand (4,000) pounds, shall be forty (\$40) dollars.

The fee for each such vehicle in class B, the chassis of which weighs four thousand (4,000) pounds and less than five thousand (5,000) pounds, shall be fifty (\$50) dollars.

The fee for each such vehicle in class C, the chassis of which weighs five thousand (5,000) pounds and less than six thousand (6,000) pounds, shall be seventy (\$70) dollars.

The fee for each such vehicle in class D, the chassis of which weighs six thousand (6,000) pounds and less than seven thousand five hundred (7,500) pounds, shall be one hundred (\$100) dollars.

The fee for each such vehicle in class E, the chassis of which weighs seven thousand five hundred (7,500) pounds and less than eight thousand five hundred (8,500) pounds, shall be one hundred twenty-five (\$125) dollars.

The fee for each such vehicle in class F, the chassis of which weighs eight thousand five hundred (8,500) pounds or over, shall be two hundred (\$200) dollars.

The fees for registration of electrically operated commercial motor vehicles, whether equipped with pneumatic or solid rubber tires, shall be on the same basis as the fees specified in this section for commercial motor vehicles with pneumatic tires.

Tractor trucks with semi-trailer attachments shall be registered as one vehicle, the registration fee for which shall be computed according to the table of weights and fees specified in this act for commercial motor vehicles, and upon the basis of the chassis weight of tractor plus the weight of semi-trailer attachment.

No registration shall be required of a trailer weighing less than five hundred (500) pounds.

The fee shall be two (\$2) dollars for each trailer weighing five hundred (500) pounds and less than seven hundred and fifty (750) pounds.

Five (\$5) dollars for each trailer weighing seven hundred and fifty (750) pounds and less than one thousand (1,000) pounds.

Ten (\$10) dollars for each trailer weighing one thousand (1,000) pounds and less than two thousand (2,000) pounds.

Fifteen (\$15) dollars for each trailer weighing two thousand (2,000) pounds or more.

The fee for the registration of any motor vehicle or trailer equipped with metal tires shall be double the regular fee for such vehicle.

The fees for registration when issued on or after August first shall be one-half those hereinbefore named.

The fee shall be five (\$5) dollars for each certificate and number plate issued to persons registered as motor-cycle dealers, and ten (\$10) dollars for each certificate and pair or number plates issued to persons registered as dealers in other motor vehicles.

The fees herein set forth for the registration of motor vehicles and trailers shall be in lieu of any other fees or taxes to be imposed by this Commonwealth, or any subdivision thereof, and no city, borough, incorporated town, township, or county shall require or collect any registration or license fee or tax for any motor vehicle or license from any operator thereof, except as to motor vehicles transporting passengers for pay or hire within the limits of any city or from points within such city to points outside of the city limits.

No fee shall be charged for the registration of motor vehicles owned and used by the United States, the State of Pennsylvania, or by any city, borough, incorporated town, township, or county, duly authorized volunteer fire department, hospital, humane society, or anti-cruelty society, in this Commonwealth, or by the American Red Cross, but all such vehicles shall be registered, and shall display number plates as is provided for privately owned vehicles.

All registrations shall expire December thirty-first of the year issued unless sooner revoked for cause by the State Highway Commissioner.

Sec. 9. Act of June 30, 1919, P. L. 678, as amended by Sec. 5, Act of May 16, 1921, P. L. 582.

1936. No person shall operate a motor vehicle on the public highways of the State recklessly or at a rate of speed greater than is reasonable and proper, having regard to the width, traffic, and use of the highway, or so as to endanger property or the life or limb of any person. No person shall drive a motor vehicle at a rate of speed exceeding one (1) mile in two (2) minutes; and no commercial motor vehicle, with solid rubber tires, in class AA, as provided in section nine of this act, shall at any time exceed a rate of speed of twenty (20) miles per hour; or

In class A, a rate of speed of twenty (20) miles per hour; or

In class B, a rate of speed of eighteen (18) miles per hour; or

In class C, a rate of speed of fifteen (15) miles per hour; or

In class D, a rate of speed of fifteen (15) miles per hour; or

In class E, a rate of speed of twelve (12) miles per hour; or

In class F, a rate of speed of ten (10) miles per hour; and no commercial motor vehicles with solid rubber tires, the chassis of which weighs less than two thousand (2,000) pounds, shall at any time exceed a rate of speed of twenty-four (24) miles per hour.

No commercial motor vehicle, with pneumatic tires, in class AA, as provided in section nine of this act, shall, at any time, exceed a rate of speed of twenty-four (24) miles per hour; or

In class A, a rate of speed of twenty-four (24) miles per hour; or

In class B, a rate of speed of twenty-two (22) miles per hour; or

In class C, a rate of speed of nineteen (19) miles per hour; or

In class D, a rate of speed of nineteen (19) miles per hour; or

In class E, a rate of speed of sixteen (16) miles per hour; or

In class F, a rate of speed of fourteen (14) miles per hour; and no commercial motor vehicle with pneumatic tires, the chassis of which weighs less than two thousand (2,000) pounds, shall, at any time, exceed a rate of speed of twenty-six (26) miles per hour.

Provided, That the authorities having charge of the highways may, in dangerous or built-up sections or at schoolhouses, churches, and public playgrounds, place signs marked "fifteen (15) mile speed limit," in letters not less than five (5) inches in height. Such of these signs as are placed at the entrance to the city, borough, town, or village of the highways that are State highways shall also bear the name of the city, borough, town, or village, in letters of the same size. Said signs shall be placed on the right-hand side of the highway, facing the traffic to be controlled, clearly legible therefrom, and at these places the speed limit shall not exceed a rate of one (1) mile in four (4) minutes for a distance beyond said sign of not more than one-eighth ($1/8$) of a mile; and, if such highway is still in a dangerous or built-up section, a second sign, similar to the above described, may be erected, and the speed limit shall not exceed the rate of one (1) mile in four (4) minutes for not more than one-eighth ($1/8$) of a mile beyond said sign; and as many signs may be erected as may be necessary. At the end of said dangerous or built-up sections, there shall be erected a sign reading "end of fifteen (15) mile speed limit," in letters not less than five (5) inches in height; said signs to be placed at right angles to the highway and facing the traffic to be controlled.

Sec. 19, Act of June 30, 1919, P. L. 678, as amended by Sec. 8, Act of May 16, 1921, P. L. 582.

Reckless driving upon the highway is the failure to exercise reasonable ordinary care in the use of it. Non-expert witnesses are competent to express an opinion as to the rate of speed of an automobile—if their every day experience gives them sufficient knowledge to form an intelligent judgment on the subject: *Commonwealth v. Godshalk*, 76 *Super. Ct.* 500.

In a prosecution under the Act of July 7, 1913, P. L. 672, it was held that an indictment framed in the words of the act is good: *Com. v. Rieker*, 35 *Lanc. L. R.* 7½.

Under the Act of 1913, which limits the rate of speed to one mile in two and one-half minutes, it was held that driving an automobile at the rate of fifty miles an hour on a public highway is a violation of the act: *Everitt v. Aueau*, 66 *Super. Ct.* 443.

In a prosecution under the Act of 1913, the allegation in a complaint that the defendant ran "in a reckless manner," at a place where a "run slow" sign had not been erected by the local authorities, can be construed only that he ran at a speed in excess of twenty-four miles an hour, the speed limit prescribed in section 14, of the act: *Com. v. Vollmer*, 25 D. R. 1070 s. c. 65 P. L. J. 12; 7 M. L. R. 212; 44 Pa. C. C. 462; 33 Lanc. L. R. 125.

The provision that no person shall operate a motor vehicle "recklessly or at a rate of speed greater than is reasonable and proper, having regard to the width, traffic and use of the highway, or so as to endanger property, or the life or limb of any person" is not void for uncertainty. *Com. v. Clime* 26 D. R. 663; s. c. 34 Lanc. L. R. 85; see *Com. v. Davidson*, 21 D. R. 885.

A borough ordinance provided: "No motor or other vehicle shall be driven at a greater speed than one mile in four minutes within this borough, and in congested districts a further reduction of this speed must be observed, consistent with safety to other vehicles and pedestrians." Held this provision is inconsistent with the Act of July 7, 1913, P. L. 672, fixing the speed limit for motor vehicles and is void: *Richards v. Borough of Freedom*, 65, P. L. J. 600; s. c. 34 Lanc. L. R. 395.

Where the ownership of the car is established and where the testimony of three persons positively defines the offense, place and manner thereof, and this is met only by denial of defendant owner, unsupported by other evidence, that he committed the offense, he was properly found guilty: *Com. v. Becker*, 34 Lnc. L. R. 66, s. c. 19 Luz. 23.

In construing Sec. 13, of the Act of July 7, 1913, P. L. 672, it was held that constables have no authority to erect danger signs in a borough unless properly authorized by the burgess and council: *Com. v. J. Clyde Myton*, 16 Lack. J. 234; s. c. 6 Lehigh. 246; 18 Dau. 393; 7 M. L. R. 27, 44 Pa. C. C. 329; 64 P. L. J. 427.

In a case of summary conviction by a magistrate for a violation of the above section the dependent has "the right of appeal as in other cases of summary conviction." *Com. v. Tannebaum*, 22 Lack L. J. 42 s. c. 34 York 197.

1937. Every motor vehicle on the public highway shall, from one hour after sunset until one hour before sunrise, show at least two lights of approximately equal power on the front of such vehicle that shall be clearly visible from a distance of at least two hundred (200) feet; Provided, That motor-cycles to which no side car is attached need display only one such light; but no brilliant light shall be displayed on any motor vehicle standing on the left-hand side of the highway: And further provided, That the council of any city or borough or the commissioners or supervisors of any township may, by ordinance, establish zones, in brightly lighted sections, within which motor vehicles may remain standing without lights.

When any motor vehicle or motor-cycle is in motion on a public highway not so lighted as to render any substantial object clearly discernible at a distance of two hundred (200) feet, it shall show a front lamp or lamps furnishing illumination in accordance with the following provisions:

Motor vehicles shall display lighted front lamps furnishing sufficient illumination to render clearly discernible, on a level highway,

any substantial object two hundred (200) feet directly ahead, and any substantial object one hundred (100) feet ahead and seven (7) feet to the right of the axis of such vehicle, and this provision shall be deemed to be complied with if the apparent candlepower of the combined beams of the lamps, as measured one hundred (100) feet directly ahead of the vehicle on a level surface and at a height not less than one-half ($1/2$) the distance of the center of the reflector above said level surface, is not less than forty-eight hundred (4,800), and if the apparent candlepower, as measured one hundred (100) feet ahead of the vehicle and seven (7) feet to the right of the axis thereof at any point not above the level of the head lamp, is not less than twelve hundred (1,200).

Motor-cycles shall display a lighted front lamp or front lamps furnishing sufficient illumination to render clearly discernible, on a level highway, any substantial object one hundred and forty (140) feet directly ahead, and any substantial object seventy (70) feet ahead and five (5) feet to the right of the axis of such vehicle, and this provision shall be deemed to be complied with if the apparent candlepower of the combined beams of the lamps, as measured one hundred (100) feet directly ahead of the vehicle on a level surface and at the height not less than one-half ($\frac{1}{2}$) the distance of the center of the reflector above said level surface, is not less than twenty-four hundred (2,400) and if the apparent candlepower, as measured one hundred (100) feet ahead of the vehicle and seven (7) feet to the right of the axis thereof at any point above the level of the head lamp, is not less than six hundred (600).

The lamps of all vehicles shall be so arranged, adjusted, and operated as to avoid dangerous glare or dazzle, and so that no dangerous glaring or dazzling rays from the lamps of any vehicle on a level road can be projected at such an angle above the level as to enter the eyes of approaching drivers or pedestrians, and this provision shall be deemed to be complied with if the apparent candlepower of the beam or combined beams of the lamp or lamps, as measured one hundred (100) feet ahead of the vehicle on a level surface and five (5) feet above the level surface, does not exceed twenty-four hundred (2,400) directly in front of the vehicle, and eight hundred (800) at a point seven (7) feet to the left of the axis of the vehicle and at the same height.

Every motor vehicle, including motor-cycles, shall also, whether standing or in motion, display one red light on the rear thereof, and, if a trailer be attached to such motor vehicle or another motor vehicle is being towed so as to obscure such red light, then a red light shall be displayed on the rear of such vehicles or such trailer; Provided, That a motor vehicle, while standing upon any public highway, may

exhibit only a parking light in accordance with the provisions further set forth in this section.

The registration plate on the rear of every motor vehicle, including motor-cycles and trailers, shall also be clearly illuminated during the same period, except when such vehicle is standing upon any public highway and exhibiting a parking light in accordance with the provisions further set in this section.

All additional or supplemental lights, including movable spotlights or searchlights, shall fully comply with these restrictions, and the rays of light from any such searchlight or spotlight shall at no time extend to the left of the center of the highway.

Every motor vehicle, while standing upon any public highway at such times as lights are required by the provisions of this section for such motor vehicles, may, in lieu of the lighting equipment specified in this act, show one light of at least two (2) candlepower, carried on the left side of the car in such a manner as to be visible to the front and rear and so as to show white to the front and red to the rear, shall be considered a full compliance with the terms of this clause.

No red light shall be displayed on the front of any motor vehicle.

The State Highway Commissioner may, after laboratory test in conformity with standard specifications, approve certain devices for controlling the front lights of motor vehicles so that they shall comply with the provisions of this section, upon the payment of such fee as he may deem necessary to cover the actual cost of such tests, not to exceed the sum of fifty (\$50) dollars, and may issue a certificate to the applicant, describing the device and certifying that such tests have been made, and that the device, when properly applied, complies with the requirements of this act.

Sec. 20, Act of June 30, 1919, P. L. 678, as amended by Sec. 9, Act of May 16, 1921, P. L. 582.

It is a violation of the act to park an automobile having any method of lighting other than that prescribed by the act: *Com. v. Krell*, 13 M. L. R. 1. Note the changes provided by the amendment of 1921.

1938. Every motor vehicle shall be provided when in use with adequate brakes, capable of controlling such vehicle under all normal conditions, and with an adequate horn, bell or other signal device, and, where such vehicle is so constructed or covered as to prevent the operator thereof from having a sufficient view of the traffic following, it shall be equipped with a mirror or other device that will enable the operator to see the road to the rear.

Sec. 21, Act of June 30, 1919, P. L. 678.

1939. Every operator of a motor vehicle shall sound his horn, bell, or signal device, giving reasonable warning of his approach whenever necessary to insure the safety of other users of the highway,

and before passing any vehicle he may overtake or pedestrian using any part of the highway other than the sidewalk, also at curves and intersecting highways where the view of approaching vehicles for a distance of one hundred (100) feet is obscured, but the horn, bell or other signal device shall not be sounded unnecessarily.

Sec. 22, Act of June 30, 1919, P. L. 678.

Where the record of a justice of the peace shows that he treated a proceeding before him for failure to sound an automobile horn as an ordinary civil proceeding, and not as a summary proceeding, the judgment will be set aside. In such a case the fact that the defendant after a certiorari issued did not file exceptions until more than ten days after the return day will not defeat his right to take advantage of a defect in the record, if the case regularly went on the argument list and was heard on its merits: *Weston v. Commonwealth, et al.* 50 Pa. C. C. 299.

1940. No person, whether an employe of the owner or custodian of any motor vehicle or not, shall tamper with or make use of or operate any motor vehicle without the knowledge or consent of the owner or custodian thereof.

No person shall operate a motor vehicle while under the influence of intoxicating liquor or any narcotic or habit producing drug, or permit any person who may be under the influence of intoxicating liquor or narcotic drugs to operate any motor vehicle owned by him or in his custody or control.

No person shall take part in any race or speed contest, for a prize or wager or otherwise, upon any public highway, or attempt to establish or lower any speed record upon any public highway.

Any operator of a motor vehicle who shall have injured the person or property of any other user of the highway shall stop, and render such assistance as may be necessary, and shall, upon request, give his name and address to the injured party or his proper representative. This provision shall apply to the owner of the motor vehicle, if present, whether he was operating such motor vehicle or not.

No person shall turn off any or all of the lights on a motor vehicle for the purpose of avoiding identification or arrest.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, or to undergo imprisonment not exceeding one (1) year, or both, at the discretion of the court, and the clerk of the court, in which such conviction is had shall certify forthwith such conviction to the State Highway Commissioner, who shall suspend or revoke the license issued to such

person, and no other license shall be issued to such person for a period of one (1) year following such suspension or revocation.

Sec. 23, Act of June 30, 1919, P. L. 678, as amended by Sec. 10, Act of May 16, 1921, P. L. 582.

An indictment under section 16 of the Act of July 7, 1913, P. L. 672, which charged that the defendant did "unlawfully operate a motor vehicle upon the streets of the city of Lancaster, Pa., when intoxicated," was held to be good. This offense is specifically excepted from the provisions of section 21 of said act, providing for summary conviction and where the magistrate's return shows that a complaint was properly made, a hearing had and the defendant gave bail to answer at court, (where the same would be presented to the Grand Jury in Ordinary course) the proceedings are proper: *Com. v. Snider*, 35 Lane. L. R. 75.

In a case coming within the provisions of Sec. 16, of the Act of 1913 it was decided that the proper proceedings was by warrant and indictment. *Com. v. Dimcigilo*, 25 D. R. 830, s. c. 44 Pa. C. C. 34; 30 York 15; 13 Del. 437.

1941. No motor vehicle of any description shall be used or operated on the public highways unless the engine be muffled so that the explosions thereof shall not constitute a nuisance to the public; and no muffler cut-out shall be used on any public highway.

No motor vehicle shall be used upon any public highway with chains or other devices projecting more than one (1) inch upon the tires thereof.

No commercial motor vehicle shall be used or operated on any public highway, the weight of which, including chassis, body, and load, shall be in excess of seven thousand (7,000) pounds for a vehicle in class AA, eleven thousand (11,000) pounds for a vehicle in class A, thirteen thousand (13,000) pounds for a vehicle in class B, eighteen thousand (18,000) pounds for a vehicle in class C, twenty-two thousand (22,000) pounds for a vehicle in class D, and twenty-five thousand (25,000) pounds for a vehicle in class E, and twenty-six thousand (26,000) pounds for a vehicle in class F; and no commercial motor vehicle, the chassis of which weighs less two thousand (2,000) pounds, shall be used or operated on any public highway when the weight of said chassis, body, and load combined exceeds five thousand (5,000) pounds.

No motor vehicle or trailer shall be operated upon any public highway, having a gross weight of vehicle and load combined in excess of twenty-six thousand (26,000) pounds or in excess of nineteen thousand five hundred (19,500) pounds on any axle, or in excess of eight hundred (800) pounds on any one wheel for each nominal inch of width of tire on such wheel, or that exceeds an over-all length of vehicle of three hundred and thirty-six (336) inches, except hook-and-ladder trucks and water-towers, or an over-all width of vehicle and load of ninety (90) inches. All commercial vehicles or trailers,

registered under this act, shall have painted, on a conspicuous place on the outside and on both sides of said vehicle or trailer, the maximum weight limit of said vehicle or trailer, including chassis, body, and load, in figures three (3) inches high. Any person or persons carrying, on any motor vehicle or trailer, a load in excess of the maximum carrying capacity as so fixed by this act, or any person or persons who remove or disfigure said signs, shall, upon summary conviction thereof before a justice of the peace, alderman, or magistrate, be subject to a fine of not less than one hundred (\$100) dollars or more than two hundred (\$200) dollars, and the justice of the peace, alderman, or magistrate imposing such fine shall forthwith certify such conviction to the State Highway Commissioner of Pennsylvania, who may forthwith revoke the license of any licensee so convicted.

Any person intending to use a truck or trailer for special hauling, gross weight of vehicle and load combined or of length in excess of the specifications hereinbefore mentioned, shall apply to the State Highway Commissioner for permission so to do upon a blank in such form as the State Highway Department shall prescribe. Such application shall set forth the location of the roads over which it is proposed to haul, the counties, townships, and municipalities in which such roads are located, the weight and length of truck, and its registration number, the number of trailers to be used, the maximum capacity of such trailers the weight of each when empty, the kind of materials to be hauled, and the date at which said hauling will be completed.

The State Highway Commissioner, upon receipt of such application and a fee of five (\$5) dollars, shall immediately inform himself as to the condition of the highway mentioned in said application by referring the same to the local authorities or otherwise, and if satisfied that the purposed use of such roadways will not result in damage thereto, may grant a permit for such number of days, and under such restrictions, as in his discretion may be necessary to prevent extraordinary damage to the roads by reason of such hauling.

All the provisions of this section shall apply to the owner of the motor vehicle, or the person having control thereof, who causes or permits such motor vehicle to be operated or equipped contrary to such provisions, and any such person shall be deemed equally guilty with the operator of any violation thereof.

Sec. 24, Act of June 30, 1919, P. L. 678, as amended by Sec. 11, Act of May 16, 1921, P. L. 582.

Where in a prosecution against the owner of a motor truck for carrying a load in excess of the maximum capacity fixed by the manufacturer, the only evidence is that the truck was overloaded, that it was the property of the defendant, and that it was being driven by the defendant's employee, the prosecution cannot be maintained, and if the defendant is found guilty the

verdict will be set aside and the defendant discharged: *Com. v. Bloom* 30 D. R. 648.

1942. No operator of a motor vehicle who meets or overtakes a street passenger car that has stopped for the purpose of taking on or discharging passengers, shall pass said car on the side on which the passengers get on or off until the car has started and until any passengers who may be alighted shall have reached the side of the highway.

When meeting or when overtaken by any other vehicle legally traveling at a greater rate of speed, the operator of any motor vehicle shall turn promptly to the right of the center of the highway, allowing such other vehicle free passage to the left.

The operator of any motor vehicle overtaking another vehicle shall pass such vehicle on the left, but shall not attempt to pass any such vehicle at intersecting highways, or at a sharp turn or curve or on approaching the crest of a hill where a full view of the highway ahead for a distance of two hundred (200) feet is obstructed.

Every operator of a motor vehicle shall, at all times, keep as close as possible to the right-hand side of the highway, allowing other vehicles free passage to the left, and no operator of a motor vehicle shall allow such vehicle to stand in the center of the highway or so as to obstruct or interfere with any other users thereof.

At the intersection of public highways, the operator of a motor vehicle shall keep to the right of the intersection of the center of such highways when turning to the right, and shall pass to the right of such intersection before turning to the left.

When two vehicles approach the intersection of two public highways at the same time, the vehicle approaching from the right shall have the right of way.

When signaled to do so by the rider or driver of any horse or other animal of draft or burden, the operator of a motor vehicle shall stop until any danger has been avoided.

Sec. 25, Act of June 30, 1919, P. L. 678.

In an action for damages for personal injuries caused by the defendant's failure to stop his automobile before passing a trolley-car which had stopped to take on passengers, the defendant cannot avail himself of the defense of contributory negligence: *Clark v. Reardon*, 37 *Lanc. L. R.* 503, s. c. 59, *P. L. J.* 26.

Where the paths of two approaching vehicles cross at the intersection of public streets, the driver at the left must give way, unless so far in advance of the other as to afford reasonable time to clear the crossing, and thus, in all probability, avoid a collision: *Weber v. Greenbaum*, 270 *Pa.* 382.

Where the warrant and information charges an offense against Sec. 25, of the act and the transcript of the magistrate sets forth a violation of section 19, the proceedings will be reversed on certiorari: *Com. v. Levy*, 30 *D. R.* 394, s. c. 1 *Somer.* 355.

It is no offense in itself to drive a motor vehicle near the left side of the street as the statute requires a motor vehicle, under certain conditions, to be driven on the left side of the street: *Com. v. Galbo*, 30 D. R. 614.

The provision that when two vehicles approach a road intersection at the same time, the vehicle approaching from the right has the right of way does not apply where one vehicle is well in advance of the other. Whether the vehicles were on the right or left side of the road has nothing to do with this phase of the case: *Snarclly v. Leaman*, 38 Lanc. L. R. 3.

1943. The operator of any motor vehicle shall stop upon request or signal of any constable, police officer, or member of the State Police Force, or designated officer of the State Highway Department, who shall be in uniform or shall exhibit his badge or other sign of authority; and shall, upon request, exhibit his registration certificate or license, and shall write his name in the presence of such officer, if so required, for the purpose of establishing his identity. He shall also furnish, to any legally constituted authority, any information in his possession as to the identity of the operator or owner of any motor vehicle.

Any constable or police officer or member of the State police force or designated officer of the State Highway Department, who shall be in uniform or shall exhibit his badge or other sign of authority, shall have the right to stop any motor vehicle, upon request or signal, for the purpose of inspecting the said motor vehicle as to its equipment or manufacturer's number or motor number or weight and securing such other information as may be necessary.

Sec. 26, Act of June 30, 1919, P. L. 678, as amended by Sec. 12, Act of May 16, 1921, P. L. 582.

A proceeding by indictment for the offense of refusing to stop a motor car at the request of an officer of the State Department of Highways is coram non iudice and void, there being no such offense at common law, and no statutory provision that would support an indictment. By this section and and section 33 of the act this offense is defined and made punishable by fine to be collected by process of summary conviction, subject to the right of the accused, at his option, to be tried, by a judge of the court of quarter sessions, rather than by the magistrate, upon entering security, but this gives no general jurisdiction to the quarter sessions to be exercised by indictment: *Com. v. Sutton*, 21 Lack. J. 100; s. c. 29 D. R. 1002; 68 P. L. J. 300.

1944. Operators of motor vehicles shall have the same rights upon the public highways as the drivers of other vehicles, and no public highway open to other vehicles shall be closed to motor vehicles.

Sec. 27, Act of June 30, 1919, P. L. 678.

1945. It being the purpose of this act to provide a system or code of law regulating the use and operation of motor vehicles throughout this Commonwealth, no city, borough, incorporated town, township, or county, shall hereafter adopt, maintain, or enforce any rule,

regulation, or ordinance, regulating the speed, equipment, use, or operation of motor vehicles other than city or borough ordinances regulating the stopping and parking of vehicles, or the establishments of zones in which vehicles may park at night without lights as provided in section twenty of this act, the use of certain streets as one-way streets, or regulating the kind and weight of traffic on certain streets and in public parks, or the establishment of safety zones; Provided, however, That, no such special regulation shall be effective unless notice of the same is posted conspicuously, by the municipality making the same, at points where any highway affected thereby joins other highways, and no regulation shall be valid which excludes such vehicles from any State highway or from any main highway leading from one municipality to another:

Provided, That any city may regulate the transportation by motor vehicles of passengers for pay within the limits of such city or from points in the city to points beyond the city limits, and make and enforce regulations for the operation of such vehicles, not inconsistent with this act, and designate certain streets upon which such vehicles may be operated.

Sec. 28, Act of June 30, 1919, P. L. 678, as amended by Sec. 13, Act of May 16, 1921, P. L. 582.

1946. All information for offenses defined in this act, committed by motor vehicle owners or operators, shall be brought under this act, and not under any local ordinance, rule, or regulation, and all such informations shall be made before a mayor, burgess, magistrate, alderman, or justice of the peace within the city, borough, incorporated town, or township, wherein such offense is alleged to have occurred if there be no mayor, burgess, magistrate, alderman, or justice of the peace, within the city, borough, incorporated town, or township, wherein such offense is alleged to have occurred, then information shall be made before a nearby mayor, burgess, magistrate, alderman, or justice of the peace; except in the case of a misdemeanor, when the information shall be made in the county wherein the offense is alleged to have occurred.

When the rate of speed of any motor vehicle is timed on a measured stretch of any highway for the purpose of ascertaining whether or not the operator of such motor vehicle is violating the provisions of this act, such time shall be taken by not less than two (2) persons, one of whom shall have been stationed at each end of such measured stretch, and no conviction shall be had upon the unsupported evidence of one person, and no such measured stretch shall be less than one-eighth ($1/8$) of a mile in length.

Sec. 29, Act of June 30, 1919, P. L. 678, as amended by Sec. 14, Act of May 16, 1921, P. L. 582.

In proceedings against violators of the speed provisions of the act, the testimony of two witnesses is not required, except in cases in which the motor vehicle was timed on a measured stretch of highway: *Motor Vehicles, 1920 Dauphin, 70, s. c. 68 P. L. J. 194, 6 Dept. Rep. 525, 49 Pa. C. C. 90, 29 D. R. 1112.*

1947. In any proceeding for the violation of the provisions of this act, or for damages growing out of the use or operation of a motor vehicle, the registration number displayed on such motor vehicle, shall be prima facie evidence that the owner of such vehicle was then operating the same: Provided, however, That if at any hearing or proceeding the owner shall testify under oath or affirmation that he was not operating the said motor vehicle at the time of the alleged violation of this act, and shall submit himself to an examination as to who, at that time, was operating such motor vehicle, and reveal the name of the person if known to him or, if the information is made in a county other than that of his own residence, shall forward to the mayor, burgess, magistrate, alderman, or justice of the peace an affidavit setting forth these facts, then the prima facie evidence arising from the registration number shall be overcome and removed, and the burden of proof shifted.

Sec. 30, Act of June 30, 1919, P. L. 678.

The registered number on an automobile is only presumptive evidence that the car belongs to the party to whom the license was issued and this presumption may be rebutted by positive evidence that the car has been sold to another: *Refaloritch v. Klinger Company* 66 P. L. J. 277.

Where, in proof of violation of section 14 of the Act of 1913, prima-facie evidence of motor car ownership was established by defendant owner admitting that the car bearing a given registered number belonged to him, and while he, unsupported by other testimony, denied that he committed the offense, but he did not allege that any one other than himself ever operated the car or was operating it at the time of the alleged violation of the act, he was properly found guilty: *Com. v. Becker, 19 Luz. L. R. Rep. 23, s. c. 34 Lane. L. R. 66.*

1948. Constables and police officers of the State, and the cities, boroughs, incorporated towns, townships, and counties of this Commonwealth, may arrest, upon view, any person or persons violating any of the provisions of this act, and such officer shall forthwith make and file with the mayor, burgess, magistrate, alderman, or justice of the peace, before whom the person arrested is taken, an affidavit setting forth in detail the offense complained of, and at once furnish a copy thereof to the person arrested.

If the defendant is unable to give bail, as is provided for in section thirty-three of this act, for a hearing or for his appearance at court, the mayor, burgess, magistrate, alderman, or justice of the peace shall accept as bail any article of sufficient value, or, provided the defendant is the owner thereof, shall hold in custody the motor

vehicle found in his possession, and the court, mayor, burgess, magistrate, alderman, or justice of the peace, after the trial of the defendant or when bail according to law has been given, shall make such order as to the disposition of such motor vehicle or other articles accepted as bail as shall seem just and proper.

Sec. 31, Act of June 30, 1919, P. L. 678.

In a prosecution under section 19 of the Act of July 7, 1913, P. L. 672, it was decided that, where an affidavit or information was not served with the warrant served by the constable or other officer having authority to serve warrants, but the defendant appeared to answer to the warrant, made no objection to the service and submitted to a hearing, an appeal will not be granted on account of defective service. *Com. v. Becker*, 34 *Lanc. L. R.* 63, s. c. 19 *Luz. L. R. Rep.* 23.

In a case where an arrest was made by an officer on Aug. 21, and a hearing had on Aug. 24, it was held that the failure to furnish a copy of the information to the defendant until the day of hearing was a fatal defect, and on certiorari the proceedings were set aside; *Com. v. Levy*, 30 *D. R.* 894.

1949. Proceedings under this act may be commenced by warrant issued in the name of the Commonwealth, which warrant may be served by a constable, policeman, or other officer having authority to serve warrants, in the county in which the violation is alleged to have been committed, but if the person charged cannot be served within such county, then the burgess, magistrate, alderman, or justice of the peace, shall deputize a constable, policeman, or other officer having legal authority to serve warrants in the county wherein the person charged resides or may be found, who shall serve such warrant, and for such service shall receive the usual fee and expenses therefor as allowed by law for such service.

A copy of the information shall be served with such warrant, and the officer serving such warrant shall take the defendant before the nearest magistrate, alderman, or justice of the peace, of the county in which the defendant is found, who shall take bail either for the defendant's appearance before the mayor, burgess, magistrate, alderman, or justice of the peace, who issued the warrant, or for his appearance for trial in the proper court if a summary hearing is waived.

All information charging violation of any of the provisions of this act, excepting violations of the provisions in section three, ten, eleven, fourteen, sixteen, twenty-three, twenty-four, thirty-four, and thirty-five, shall be brought within two (2) weeks after the commission of the alleged offense and not after: Provided, That before the service of any warrant, and within the period of seven (7) days after information has been lodged, the mayor, burgess, magistrate, alderman, or justice of the peace shall mail to the person so charged at the address shown by the records of the State Highway Department a notice in writing of the issuing of the warrant, together with

a copy of the information, and if the person named in the warrant shall not voluntarily appear with ten (10) days thereafter, the warrant may then be served as herein provided.

Sec. 32, Act of June 30, 1919, P. L. 678.

1950. Any person, except as provided in section three, four, eleven, fourteen, sixteen, twenty-three, twenty-four, thirty-four, and thirty-five, convicted of violating any of the provisions of this act, shall be subject to a fine or penalty of not less than ten (\$10) dollars nor more than twenty-five (\$25) dollars, to be collected by summary conviction before any mayor, burgess, magistrate, alderman, or justice of the peace, as like fines, and penalties are now by law collected, or, in case of nonpayment of such fine, to undergo an imprisonment in the county jail for a period not exceeding five (5) days; Provided, That any person so convicted shall have the right of appeal as in other cases of summary convictions: And further provided, That any person accused of violating any of the provisions of this act may waive summary hearing, and give bond in a sum equal to double the amount of the maximum fine that might be imposed for appearance for trial before a judge of the court of quarter sessions, or in the county court, or in the municipal court in counties wherein such courts exist, and thereupon the burgess, magistrate, alderman, or justice of the peace shall, within fifteen (15) days, return the complaint or information to the said court, and if any person so accused shall be convicted in such court of of the offense charged, he shall be subject to a fine of not less than ten (\$10) dollars nor more than twenty-five (\$25) dollars, or, in case of nonpayment of such fine, to undergo imprisonment in the county jail for a period not exceeding five (5) days.

Any person previously convicted of violating any of the provisions of this act shall, upon conviction of any second or subsequent violation within a period of six (6) months after such conviction, be subject to pay a fine of not less than twenty-five (\$25) dollars nor more than fifty (\$50) dollars, or, in case of nonpayment of such fine to undergo imprisonment in the county jail for a period not exceeding ten (10) days; Provided That any person so accused of any second or subsequent violation of the provisions of this act shall have the same right of appeal, or may waive summary hearing, in the same manner and upon the same conditions, as is provided for in cases of first violation.

Sec. 33, Act of June 30, 1919, P. L. 678, as amended by Sec. 15, Act of May 16, 1921, P. L. 582.

In case of a summary conviction for a violation of the act, the defendant has the right of appeal as in other cases of summary conviction. The ap-

peal must be taken within five days after the date of conviction on allowance by the court or by a judge thereof, on cause shown and upon giving security before the court. If these conditions are not observed the appeal cannot be heard. The question of the regularity of the conviction or the jurisdiction of the magistrate cannot be considered on an appeal; but must be brought before the court on certiorari; *Com. v. Tannebaum*, 69 P. L. J. 780, s. c. 30 D. R. 943.

See note to Sec. 1943.

In construing section 21 of the Act of July 7, 1913, P. L. 672, which in general import is similar to this section, it was held that the act is not unconstitutional. Two methods of hearing are provided; First, waving the summary hearing and demanding a trial by jury; or second, trial before the magistrate, and after conviction, appeal, to be heard as cases of summary conviction are usually heard. In the former proceeding the case is to be tried by jury and in the latter before the court. Where defendant gave bail for a hearing but the record shows no hearing but a recognizance for appearance at court, it is to be presumed that the defendant chose the first method. An improper recognizance can be perfected: *Com. v. Ricker*, 35 *Lanc. L. R.* 74.

In *Com. v. Davis*, 44 Pa. C. C. 562, s. c. 64 P. L. J. 692; 33 *Lanc. L. R.* 388; 14 *Del.* 171, it was held that where a person waives a hearing before a justice of the peace and secures a trial by jury, the proceeding before the court and jury is a summary conviction, of which a grand jury has no jurisdiction. But see contra, *Com. v. Cline* 26 D. R. 663; s. c. 34 *Lanc. L. R.* 85; *Com. v. Ricker*, 35 *Lanc. L. R.* 74.

Proceedings under the Act of 1913 are either by warrant in cases of misdemeanor, or by suit for a penalty as provided for in section 21 of the act: *Com. v. Dimcilo*, 25 D. R. 839, s. c. 13 *Del. Co.* 437; 30 *York* 15; 44 Pa. C. C. 34.

Under the Act of 1913, a judgment of a justice of the peace against a defendant was set aside where the record of the justice failed to set forth in substance the evidence taken on behalf of the Commonwealth and of the defendant: *Com. v. Davics*, 43 Pa. C. C. 536, s. c. 6 *Lehigh* 338; *Com. v. Shire*, 28 *York* 113.

Under the Act of 1913, it was decided that one who operates an automobile upon a public highway without displaying a license number tag on the car, may be convicted of a violation of the act although the owner of the car was riding with him at the time and has also been fined by a justice of the peace for the same offense. It is no defense that defendant was a minor, and committed the offense under the direction of his father, who was the owner of the car and rode with him at the time. *Com. v. Buzzard*, 27, D. R. 21, s. c. 45 Pa. C. C. 396.

1951. All fines and penalties collected under the provisions of this act for violations of the same and all bail forfeited shall be paid to the State Treasurer, to be placed in a deposit-fund to be available for the use of the State Highway Department, except those collected for violations of the provisions as to speed or weight, which shall be paid to the treasurer of the city, borough, town, or township, where in the violation occurred, to be used for the construction, repair, and maintenance of the highways thereof, and sworn statements of all fines and penalties so collected shall also be made, upon blanks to be furnished by the State Highway Department, by the burgess.

magistrate, justice of the peace, or other officer imposing or receiving the same, to the State Highway Commissioner. Said reports shall be made quarterly, not later than the tenth (10th) day of the months of January, April, July, and October of each year. Any burgess, magistrate, justice of the peace, or other officer, who shall fail to make such quarterly reports and returns, or either of them, shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, shall be subject to a fine of not less than one hundred (\$100) dollars nor more than five hundred dollars (\$500) dollars, or imprisonment in the county jail for a period of sixty (60) days, or both, at the discretion of the court.

Sec. 35, Act of June 30, 1919, P. L. 678.

This section is substantially a re-enactment of Sec. 22 of the Act of July 7, 1913, P. L. 672, with the addition of forfeited bail. In construing the Act of 1913 it was decided that the return of fines and penalties imposed must be sworn to before some officer other than the person making the return: *In re Administration of Oaths, Opinion by Wm. H. Keller, Dep. Atty. Gen.*, 3 *Dep. Rep.* 463.

A justice of the peace having found the defendant guilty of violating the act, he has no alternative but to impose a fine. He has no power to remit the fine and collect only his costs: *Motor Vehicles Fines*, 68 *P. L. J.* 698.

(b) Regulations for Vehicles Other Than Motor Vehicles.

1952. On and after the first day of July, one thousand nine hundred and nineteen, from one hour after sunset until one hour before sunrise, or whenever it is impossible to distinguish substantial objects at a distance of two hundred feet, there shall be displayed upon every vehicle excepting agricultural machinery and such as are propelled by hand or are loaded with hay or straw in bulk, while standing or in motion upon any public highway in the State of Pennsylvania, at least one white light, which shall be clearly visible for a distance of at least two hundred (200) feet from both the front and the rear of such vehicle.

Sec. 1, Act of June 12, 1919, P. L. 451.

1953. No vehicle meeting or overtaking a street passenger car that has stopped for the purpose of taking on or discharging passengers, shall pass such car, on the side on which passengers get on or off, until the car has started, and until any passenger who may have alighted shall have reached the side of the highway.

Sec. 2, Act of June 12, 1919, P. L. 451.

1954. Slow moving and heavily-laden vehicles, shall, at all times, keep as near to the right-hand boundary of the highway or to the right-hand curb as possible, and the driver of any vehicle, meeting

another vehicle or overtaken by another vehicle traveling at a greater speed, shall turn promptly to the right of the center of the highway, allowing such other vehicle free passage to the left; and no vehicle shall be permitted to stand in the center of any highway or so as to obstruct or interfere with traffic thereon.

Sec. 3, Act of June 12, 1919, P. L. 451.

1955. The term "public highway," as used in this act, shall include all roads, streets, avenues, alleys, and public places, and all public bridges and the approaches thereto.

Sec. 4, Act of June 12, 1919, P. L. 451.

1956. Constables and police officers of the cities, boroughs incorporated towns, townships, and counties, in Pennsylvania, and members of the State Police Force, may arrest, upon view and without warrant, any person violating any of the provisions of this act.

Sec. 5, Act of June 12, 1919, P. L. 451.

1957. Any person violating any of the provisions of this act shall be subject to a fine of not less than two (\$2.00) dollars nor more than five (\$5.00) dollars for each offense, to be collected by summary conviction before any burgess, alderman, magistrate, or justice of the peace, which fine shall be paid into the treasury of the city, borough, incorporated town, or township, wherein the offense has occurred. In the case of nonpayment of such fine, such person shall undergo an imprisonment in the county prison for a period not exceeding five (5) days.

Sec. 6, Act of June 12, 1919, P. L. 451.

1958. All acts and parts of acts inconsistent herewith are hereby repealed; but nothing in this act shall effect or limit the special requirements for the display of lights or the regulation and restrictions placed upon motor vehicles.

Sec. 7, Act of June 12, 1919, P. L. 451.

CHAPTER XXXVII.

FENCES.

1959. It shall and is hereby declared to be lawful for any land owner within this Commonwealth to construct, build and maintain, along any of the highways of this commonwealth, fences made in whole or in part of wire without barbs, subject at all times to such restrictions and prohibitions as may be imposed by the municipal authorities relative thereto.

Sec. 1, Act of May 2, 1899, P. L. 163.

1960. A fence, in whole or in part of wire, without barbs, is hereby declared to be a legal and lawful fence, within the meaning and provisions of any act of the legislature of this state relative to the building, constructing and maintaining of line fences, provided that such wire fence shall be of the height required by such act or acts.

Sec. 2, Act of May 2, 1899, P. L. 163.

This act does not make it unlawful to build a wire fence with barbs: *Dice v. Rumler*, 47 Pa. C. C. 42.

1961. Whereas, From the different acts of Assembly in regard to fence laws in this Commonwealth, grave complications and litigations arise between owners of real estate as to the line of partition fences:

From and after the passage of this act, owners of improved and occupied land shall erect and maintain an equal part of all line or division fences between them, nor shall any such owner be relieved from liability under the provisions of this act except by the consent of the adjoining owner. And if any owner of such improved and occupied land shall fail or neglect to erect or maintain his, her or their share of such line or division fence, the party aggrieved shall notify the township (or borough) auditors, whose duty it shall be to examine such line or division fence, so complained of; and if they find said fence sufficient, the complainant shall pay the costs of their services, which shall be two dollars for each day's-service; but if they find such fence insufficient, they shall so report to a justice of the peace, residing in the county where such fence is located, designating points and distances of such fence, whether a new fence is required or whether the old one can be repaired, and the probable costs of a new, or the repair of the old, fence; and said justice shall notify the delinquent owner of such improved and occupied land of the auditors' report, and that his part of said

fence, as found by the auditors, be erected or repaired within forty days from the date of such notice; and if such notice be not complied with the aggrieved party may cause said line or division fence to be erected or repaired, and the costs thereof collected from the delinquent owner of such improved and occupied land, as other debts are collected by law: Provided, however, That no owner of improved land shall be compelled to build or repair fence during the months of December, January, February, and March: And provided further, That nothing herein contained shall be construed to apply to railroad companies.

Sec. 1, Act of April 14, 1905, P. L. 162.

It is suggested in *Scheidy v. Huey*, 18 D. R. 967, that this act supersedes the Act of March 11, 1842, P. L. 62, see Secs. 1963-1970.

1962. Where an owner has improved up to and erected upon the line a division fence, and an adjoining owner subsequently improves and occupies up to said line, he shall become liable to the former for such part of the cost of said fence as is just and reasonable, taking into consideration the quantity of the fence, the length of time it had been erected and its condition. And in case the parties fail to agree on the amount to be paid, the owner who erected said fence may complain to the auditors, aforesaid, who shall assess the amount which, in their opinion, the other party should pay; which amount, with costs, may be recovered as provided in section one of this act.

Sec. 2, Act of April 14, 1905, P. L. 162.

A report of borough auditors as to the rebuilding of a partition fence under this act and proceedings thereon are void where there was no notice given to and no personal attendance by the party charged with the cost of repairs: *Carpenter v. Wolf*; 37 Lanc. L. R. 41; s. c. 34 York 9, affirmed in 76 Super. Ct. 363.

Neither the auditor nor the justice of the peace has any right to determine the line upon which a fence should be built, this involves a question of title. *Crowley v. Hastings et al*, 36 Mont. L. R. 34.

Unless the required acts provided for in this act to give a party the right to have a fence built appear from the record to have been performed there can be no collection of the amount claimed for the erection of a fence: *Singer et al. v. Detrick*, 9 Just. L. R. 106.

The auditor's report which fails to set forth within a reasonable certainty the beginning and ending points of such line fence or definitely locate it by courses and distances or otherwise, is defective and insufficient in law: *Grim v. Herbst*, 9 Just. L. R. 221; s. c. 24 York 99.

For proceedings for the erection of a partition fence under this act, notice of the view by the township auditors must be given to the defendant, although the statute does not expressly require such notice. The preamble to this act would appear to indicate an intention to make it a revision of and substitute for the existing fence laws: *Scheidy v. Huey*, 18 D. R. 967.

Township auditors when acting as fence viewers have judicial functions but do not constitute a court nor is their decision subject to appeal. No particular form is made essential to the validity of their report and when their duty has been substantially performed, their certificate has all the force intended by the statute: *Turner v. Richards*, 34 Super. Ct. 624.

1963. In addition to the duties now imposed upon the township auditors they shall hereafter perform the duties hereinafter prescribed as fence viewers. That in addition to the oath now prescribed, to be taken by the auditors they shall annually be sworn or affirmed, to discharge their duties as such viewers faithfully and impartially.

Sec. 1, Act of March 11, 1842, P. L. 62.

The act of April 4, 1889, P. L. 27, repealing the fence act of 1700 is not inconsistent with this act and did not repeal it. It is suggested in *Scheidy v. Huey*, 18 Dist. R. 967, that this act is superseded by the Act of April 14, 1905, P. L. 162.

A justice of the peace cannot usurp the jurisdiction of fence viewers. Where the parties cannot agree the viewers must determine whether a new fence is necessary or whether the old should be repaired: *Weaver v. Block*, 1 Just. L. R. 80, s. e. 18 Mont. C. 195.

1964. In case of the death, removal or resignation of any fence viewers, and auditors, so elected, the judges of the court of the proper county, shall appoint a suitable person to fill the vacancy, for the unexpired term of the person whose place is vacant.

Sec. 2, Act of March 11, 1842, P. L. 62.

1965. When any two persons shall improve lands adjacent to each other, or where any person shall enclose any land adjoining to another's land already fenced in, so that any part of the first persons fence becomes the partition fence between them, in both these cases the charge of such division fence, so far as is enclosed on both sides, shall be equally borne and maintained by both parties.

Sec. 3, Act of March 11, 1842, P. L. 62.

The provisions of this act do not apply to unimproved lands: *Palmer v. Silverthorn*, 32 Pa. 65.

Where the land between adjoiners is unimproved and unoccupied the Township auditors have no jurisdiction to view and determine the question of necessity or liability. The decision of fence viewers is not final and does not have the force of a special verdict, especially where it is alleged that they had no jurisdiction: *Farber v. Straup*, 14 Just. L. R. 225.

If one of two adjacent land improvers abandons the division line and sets his fence upon his own land, and throws out a lane to public use, the owners no longer improve adjacent lands and are not within the statutory remedy: *Rohrer v. Rohrer*, 18 Pa. 367.

Where a private lane between two farms, running from one public road to another, is closed by the owner of the land upon which the lane is situated,

the other owner may build a division fence along his side of the lane and compel his neighbor to contribute to the cost of the fence: *Odenwelder v. Frankenfield*, 153 Pa. 526.

1966. On notice given the said viewers, shall within five days thereafter view and examine any line fence as aforesaid, and shall make out a certificate in writing, setting forth whether in their opinion, the fence of one (which) has been already built, is sufficient, and if not, what proportion of the expense of building a new or repairing the old fence, should be borne by each party, and in each case, they shall set forth the sum, which in their judgment each party ought to pay to the other, in case he shall repair or build his proportion of the fence, a copy of which certificate shall be delivered to each of the parties; and the said viewers shall receive the sum of one dollar for every day necessarily spent by them, in the discharge of their duties, which they shall be entitled to receive from the delinquent party, or in equal sums from each as they shall decide to be just.

Sec. 4, Act of March 11, 1842, P. L. 62.

1967. If the party who shall be delinquent in making or repairing of any fence, shall not within ten days after a copy of the certificate of the viewers shall have been delivered to him, proceed to repair or build the said fence, and complete the same in a reasonable time, it shall be lawful for the parties aggrieved, to repair or build the said fence; and he may bring suit before any justice of the peace or alderman against the delinquent party, and recover as in other actions, for work, labor, service done, and materials found, and either party may appeal from the decision of the justice or alderman as in other cases.

Sec. 5, Act of March 11, 1842, P. L. 62.

The jurisdiction of a justice of the peace under this act, to enforce contribution is not ousted by raising a question of title to the land. Where there is in fact a partition fence, the duty of contribution to maintain it is fixed and neither party can excuse himself from this duty by alleging that the line is in dispute: *Stephens v. Shriver*, 25 Pa. 78.

1968. The said viewers shall not be called out to view any fence, between the first day of November, and the first day of April, of the next year.

Sec. 6, Act of March 11, 1842, P. L. 62.

1969. If any viewer shall neglect or refuse to perform any duty herein enjoined upon him, he shall pay for each, such neglect or refusal, the sum of three dollars, to be recovered by the party aggrieved as debts of like amount are recoverable.

Sec. 7, Act of March 11, 1842, P. L. 62.

1970. A majority of the viewers in each township, shall be a quorum, and shall have power to do all the duties herein assigned.

Sec. 8, Act of March 11, 1812, P. L. 62.

CHAPTER XXXVIII.

STRAYS.

1971. If any person shall discover upon his, her or their improved and inclosed lands, any stray cattle, horse or sheep, it shall and may be lawful for such person or persons to take up the same; and it shall be the duty of such person or persons to give notice thereof to the owner of such stray, if he or she can be readily found, but if otherwise, such person as aforesaid, shall within four days deliver to the town-clerk aforesaid, a particular description of the color and marks, natural or artificial, of such stray or strays, in writing or other satisfactory way; and for every neglect or refusal to do the same, he or she shall forfeit and pay the sum of five dollars, to be recovered as debts of a similar amount are by law recoverable; and it shall be the duty of the town-clerk, subject to like penalty for neglect or refusal to make an entry of the same in the book aforesaid, for which entry so made, the said clerk shall receive for each head of horse kind, fifty cents; and for each head of cattle, twenty-five cents; for every sheep, six cents; to be paid by the person delivering such notice aforesaid; and such person may detain such stray or strays, until the owner thereof shall reimburse him or her the expence of such entry, and also pay all reasonable charges of publishing such notice, which shall not exceed the sum of six cents per mile, to be estimated from the residence of the person taking up such stray or strays, to the place of keeping the book aforesaid, and also all reasonable expence for keeping such stray or strays, as well as the damage which may have been done by the same.

Sec. 2, Act of April 13, 1807, P. L. 286.

A certiorari does not lie to a justice of the peace, to remove proceedings had before him under this act: *Frick v. Patton*, 2 *Rawle* 20.

The remedy for injury to property done by vagrant hogs is either under the act of 1862, if defendant permitted his hogs to run at large, and the stray laws of 1807 and 1819; or under the act of 1808 if the plaintiff's fences were "neighbor like" even if the swine were accidentally at large; or by the common law remedy by action of trespass, which is not repealed: *Mitchell v. Wolf*, 46 *Pa.* 147.

The terms of this act must be strictly complied with and everything essential to the jurisdiction of court must appear on the record: *For v. Crooks, et al*, 42 *Pa. C. C.* 561, s. c. 24 *D. R.* 226 and 62 *P. L. J.* 554;

Irwin v. Mattox, 138 Pa. 473; *Bair v. Diller* 18 Pa. 521, s. c. 14 Lanc. L. R. 6; *Mellinger v. Deibler*, 1 Lanc. L. R. 73; *Wilbur v. Loveland*, 5 Luz. 122.

This act has no application to cattle straying across an unfenced boundary line between their owners' field and the field of a neighbor: *Irwin v. Mattox* 138 Pa. 473.

in proceeding under this act, notice must be given to the owner where he is known: *Shugar v. Meily*, 4 Pa. C. C. 77; *Bair v. Diller*, 18 Pa. C. C. 521; s. c. 14 Lanc. L. R. 6; *Rothey v. Worcester*, 33 Pa. C. C. 168. s. c. 16 D. R. 692; 54 P. L. J. (o. s.) 297; *Vandamager v. Wood*, 2 Ash. 203; *Mellinger v. Deibler*, 1 Lanc. L. R. 73; *Henry v. Herr*, 7 Lanc. L. R. 29; *Kelly v. Stephens*, 2 Foster 335.

When trespassing cattle are detained by the injured party the presumption is that they are taken in the exercise of a claim of ownership and not to recover damages under the Stray Law of 1807. The owner must proceed by replevin or trespass and not under the Stray Law unless the injured party has subjected himself to that act by giving the notice or filing the description of the cattle with the town-clerk as required by section 2 of the act. *Murphy v. Dressler*, 14 D. R. 129, s. c. 2 Just. L. R. 149.

The Stray Law applies only to lands which are both improved and fenced. The repeal of the fence law had no effect on the Stray Law: *Murphy v. Dressler*, 14 D. R. 129, s. c. 2 Just. L. R. 149.

Where an action of replevin has been brought to secure possession of a horse which had strayed upon defendants' enclosed lot and had been seized by the defendant under the provisions of this act, the defendant can not be deprived from the benefit of his lien or his rights under Sec. 6, of the act of April 19, 1901, P L. 88: *Young v. Couche*, 52 Super. Ct. 592.

When cattle are taken damage feasant, under the provisions of the Act of April 13, 1807, replevin cannot issue until the fees and charges provided by the act are paid: *Moore v. Trout and Groff*, 2 Del. 13.

When the owner of strays is ascertained by the injured party or the justice after the commencement of proceedings notice of the time and place of the meeting of the appraisers, of their report to the justice, and of the entry of the judgment must be given to such owner, and appear upon the record: *Mellinger v. Deibler*, 1 Lanc. L. R. 73.

Trespass will not lie against one who takes up a stray cow and sends her to township clerk, although he fail to give notice to the owner. He merely forfeits his right to damages: *Henry v. Herr*, 7 Lanc. L. R. 29; *Kelly v. Stephens*, 2 Foster, 335.

A justice of the peace has no jurisdiction over strays taken upon lands in another county: *Wilbur v. Loveland*, 5 Luz. 122.

1972. If the owner of any such stray or strays taken up as aforesaid, shall appear and neglect or refuse to make or tender a reasonable satisfaction to the party injured, for the damages sustained by such trespass, and for the cost of keeping such stray, or if such person or persons detaining such stray, shall not accept the said satisfaction, it shall be lawful for either of the parties aforesaid, to

complain to any justice of the peace of the proper township or county where such stray shall be taken up as aforesaid, who shall upon such complaint and application issue his warrant directed to three disinterested and honest freeholders of the neighborhood, commanding and enjoining them forthwith to view the trespass, to value and appraise the same, having due regard to the sufficiency of the fence of such enclosure, with the expense and cost of keeping the said stray or strays, to make report thereof to him the said justice with all convenient speed; which said valuation and appraisement and return, they, the said freeholders are hereby enjoined and required to make accordingly; and if the said valuation and appraisement shall not amount to more than the sum of money tendered to the party injured, as a recompence for the damage done as aforesaid, before such complaint made, then the said justice shall give judgment for the same only to the party refusing such tender, and award reasonable costs; but if the said valuation shall amount to more than the sum tendered, or if no such tender be made, then and in that case the said justice shall award and give judgment for the valuation aforesaid, to the parties injured, with reasonable costs for keeping the stray aforesaid, (to be estimated from the time of giving notice as aforesaid,) against the other party, and shall award execution upon every such judgment, with costs of suit accordingly: Provided, That the said valuation and appraisement come within the jurisdiction of the said justice, but if not, then the said damage shall be recovered as debts of an equal amount are by law recoverable: And provided always, That if no owner for any such stray shall have been found, within thirty days after the same shall have been taken up, then, and in that case, the person taking up the same, shall not be entitled to receive any compensation for the damages done by the same, unless he shall within six days thereafter, have given notice to three disinterested freeholders to value and ascertain the amount of the same, which they are hereby authorized and required to do forthwith, and to make report thereof on oath or affirmation, to any justice of the peace residing in the proper township, who shall, when the owner of such stray shall be found, upon his or her neglect or refusal to pay the same, give judgment and award execution with costs as aforesaid: And provided also, That if the amount of the said appraisement and valuation, be not within the jurisdiction of a justice of the peace, the said damage may be sued for before any court of competent jurisdiction, and in all cases before a justice, the defendant or plaintiff shall have like benefit of stay of

execution or appeal, as is given under the existing laws relating to justices of the peace.

Sec. 3, Act of April 13, 1807, P. L. 286.

In proceeding under this act the record must show affirmatively that all requirements of the act have been complied with: *Wilbur v. Loveland*, 5 Luz. L. R. 122; *Bair v. Diller*, 18 Pa. C. C. 521, s. c. 14 Lanc. L. R. 6.

Warrant issued to the appraisers must be issued to them as freeholders: *Bair v. Diller*, 18 Pa. C. C. 521, s. c. 14 Lanc. L. R. 6.

Notice of the meeting of viewers appointed under this section should be given to the owners of the stray cattle although statute does not expressly so require: *Rothey v. Worcester*, 16, D. R. 692, s. c. 54 P. L. J. (o. s.) 297.

The stray law applies only to lands which are both improved and fenced. The repeal of the Fence Law had no effect on the Stray Law: *Murphy v. Dressler*, 14 D. R. 129.

Where an action of replevin has been brought to secure possession of a horse which had been seized by the defendant under the provisions of this act, the defendant is not shut up to the remedy provided by this act in order to secure his damages: *Young v. Couche*, 52 Super. Ct. 592.

1973. If no owner shall appear, within thirty days after any such stray shall have been taken up, it shall be the duty of the person taking up the same, to cause an advertisement, particularly describing such stray, to be published at least in one newspaper in the proper county, if any there be, but if otherwise, to publish the same, by written or printed advertisements, which shall be put up at six or more public places in the county; and if no owner shall appear and make out his or her property in the said stray or strays, within ninety days after the publication of such advertisements as aforesaid, the person taking up the same, shall make application to any justice of the peace in the said township, who is hereby authorized and required to issue his warrant to any constable within the township as aforesaid, and cause him to expose the said stray or strays to public sale, first giving at least ten days notice in three or more public places in the said township, and after he shall have sold the same, he shall make a return thereof to the said justice, who shall after the payment of all reasonable charges, and damages, and cost of keeping as aforesaid, pay over the surplus, if any there be of such sale, to the county-treasurer; but if the owner of such stray or strays shall appear within one year after such sale, and prove his, her or their property, to such stray or strays, the said justice, or any other in the county, shall certify the same to the county treasurer, who shall pay to the said owner, the whole amount of such surplus aforesaid, but if no owner shall appear within the time limited as aforesaid, he or she shall be thereafter barred from all right to the same, and the money aforesaid, may be applied to such purposes as other moneys in the treasury usually are.

Sec. 4, Act of April 13, 1807, P. L. 286.

1974. If the owner of any stray or strays, taken up under authority of the act to which this is a supplement, shall neglect or refuse to make or tender reasonable satisfaction to the party injured, for the damages sustained by reason of the trespass of such stray and for the costs of keeping; or if such injured party shall not accept the satisfaction which may be offered, it shall be the duty of such injured party to make immediate application to any justice of the peace of the proper county, who shall proceed upon such application in the manner directed by the act to which this is a supplement.

Sec. 2, Act of March 5, 1819, P. L. 87, supplementing act of April 13, 1807, P. L. 286.

The remedy for injury to property done by vagrant hogs, is either under the act of 1862 if defendant permitted his hogs to run at large, and the stray laws of 1807 and 1819 or under the Act of 1808 if the plaintiff's fences were "neighbor like" even if the swine were accidentally at large, or by the common law remedy by action of trespass, which is not repealed by the stray laws in force: *Mitchell v. Wolf*, 46 Pa. 147.

If the owner is found after proceedings commenced, the amount assessed by the appraisers must be made known to him, and until he neglects or refuses to pay the same judgment cannot be entered against him by the justice: *Mellinger v. Deibler*, 1 Lanc. L. R. 73.

1975. If the owner shall not have appeared within ten days after any such stray shall have been taken up, it shall be the duty of the person taking up such stray, to cause the same to be advertised in manner prescribed by the fourth section of the act to which this is a supplement. And if the owner shall not have appeared within sixty days after such advertisement and publication, the person taking up the same, shall make application to a justice of the peace, and the same proceedings shall be had as are directed by the act to which this is a supplement. And that so much of the act to which this is a supplement as is hereby altered, be, and the same is hereby repealed.

Sec. 3, Act of March 5, 1819, P. L. 87, supplementing Act of April 13, 1807, P. L. 286.

1976. The provisions of the act of the thirteenth day of April, one thousand eight hundred and seven, together with its supplements, relating to strays, be and the same are hereby extended to mules.

Sec. 1, Act of March 5, 1858, P. L. 78.

1977. If any person or persons, taking up any stray or strays, shall neglect to give notice as is herein before directed, he, she or they, so offending, shall forfeit all right and title to, by recovery of any sum or sums of money for any trespass committed by the same, but

shall deliver up the said stray or strays so detained to the owner thereof, without any recompense, fee, or reward, whatsoever.

Sec. 5, Act of April 13, 1807, P. L. 286.

1978. The books to be kept as aforesaid, by the respective town clerks of each township, shall be at all times kept open and free for any person or persons, who at any time may have occasion to search therein, for any such stray; and for which search, such clerk shall not ask or receive any fee or reward, under the penalty of three dollars, to be recovered by the party aggrieved, in manner aforesaid, with costs of suit.

Sec. 6, Act of April 13, 1807, P. L. 286.

1979. From and after the first day of March next, the act, entitled "An act for erecting pounds in each township in this province," and the act, entitled "An act concerning cattle, horses and sheep trespassing within this province," be, and the same are severally hereby repealed, so far as they relate to the counties mentioned in this act, and this act shall then be in full force and operation.

Sec. 7, Act of April 13, 1807, P. L. 286.

1980. From and after the passage of this act, no stallion, bull, boar, ram or jack, shall be permitted to run at large on the public highways of this Commonwealth.

Sec. 1, Act of April 26, 1889, P. L. 64.

1981. It shall be lawful for any person finding any such animal running at large to have the same impounded, and such impounding advertised within ten days from date of impounding, in one weekly newspaper for two weeks, published nearest the place where such animal is impounded, and if said animal be not reclaimed within twenty days after such advertised notice, by payment of all costs and charges, together with one dollar to the person causing the said animal to be impounded, shall be sold at public sale, and the amount realized from sale, less the said cost and charges, shall be paid to the treasurer of the school district wherein such animal is impounded.

Sec. 2, Act of April 26, 1889, P. L. 64.

1982. Whereas the freeholders and owners of lands and plantations, within this province, have received great damage and spoil in their corn-fields, meadows and outlands by swine running at large, without rings and yokes: For the prevention whereof for the future, Be it enacted, That from and after the first day of the twelfth month, called February, next ensuing the publication hereof, no swine shall be suffered to run at large, without rings and yokes, under the penal-

ty of forfeiting half the value thereof, to the use hereafter expressed: Therefore if any person or persons shall find on his, her or their lands, within fourteen miles of the navigable parts of the river Delaware, any swine, hog or hogs, shoat or shoats, or pigs, without rings in their noses, sufficient to prevent their turning up the ground, and triangular or three cornered yokes or bows about their necks, and to extend at least six inches* from the angular point or corner, sufficient to keep them from breaking through fence, it shall and may be lawful for him, her or them, all such swine, hogs, shoats or pigs, to kill and take, and drive and carry away, or to cause them to be killed, taken, driven or carried away; and being so taken and carried away, the said takers shall forthwith acquaint a Justice of the Peace thereof, and being by him legally attested, that the said swine were taken as aforesaid, without yokes, or bows and ring, the said Justice shall immediately appoint and order two indifferent persons of the neighbourhood, to view and make a just and reasonable appraisement of all such swine, hogs, shoats or pigs, and to make return of their value, number and marks, unto the said Justice of the Peace, as soon as conveniently it may be done after such appraisement, one moiety or half the value whereof shall be forfeit to the person or persons, owners or possessors of such lands where found and taken; and he or they, that shall take up such swine as aforesaid, shall pay unto the said Justice of the Peace, for the use of the owner or owners of such swine, the other moiety or half part thereof; and thereupon the property of all such swine shall be and remain in the said owner or possessor of land as aforesaid, to his and their own proper use, forever.

Sec. 1. Act of 1705, 1 Sm. Laws, Page 70.

See the act of May 10, 1729, 1 Sm. Laws 176, which extends this act to the entire province of Pennsylvania. Sec. 1986.

This act applies only where they are voluntarily suffered to go at large, not where they escape from the owner without his default, and if the proceedings do not state this they will be quashed.

It is not necessary that proceedings by a justice under this act should contain any adjudication, nor is the appointment of appraisers process, which the constitution requires to be in the name of the Commonwealth.

A certiorari lies from the Supreme Court to remove the proceedings of a justice under this act: *Commonwealth v. Fourteen Hogs*, 10 S. & R. 393; *Shaw v. Commonwealth*, 72 Pa. 68; *Knapp v. Miller*, 133 Pa. 275; *Commonwealth v. a Boar Pig*, 2 Chester Co. 575; *Leferre v. Rauck*, 2 Del. 380.

The statutory forms of procedure must be strictly complied with.

To justify a forfeiture of a hog, the justice's record must show everything required by the Act of Assembly to give him authority: *Strauser v. Kosier*, 58 Pa. 496; *Shaw v. Commonwealth*, 72 Pa. 68; *Knapp v. Miller* 133 Pa. 275; *Commonwealth v. A Hog*, 4 Pa. C. C. 76; *Altland v. Swine ex rel. McSparran*, 13 Pa. C. C. 383; s. c. 10 Lanc. L. R. 241; *McCurdy v. Thompson*, 2 Lanc. L. R. 297; *Boice v. Curtis*, 2 Luc. 203; *Leferre v. Rauck*, 2 Del. 380.

The jurisdiction of the justice attaches when he is "legally attested" of the required facts. An affidavit signed and sworn to before the justice, fully stating all the jurisdictional facts is a proper method of such legal attestation, and is a part of the record, admissible in evidence as such: *Knapp v. Miller*, 133 Pa. 275.

The owner of swine who permits them to run at large without rings and yokes in violation of this act is liable in an action of trespass: *Stewart v. Benninger*, 138 Pa. 437.

This act is repealed as to Cumberland and Perry counties by the Act of April 2, 1821, 7 Sm. L. 456: *Martin v. Reed*, 10 Pa. C. C. 614.

Swine were not suffered to run at large within the meaning of this act where the owner by express permission of another had turned the swine into his own field which was not fenced off from the other man's land: *Martin v. Reed*, 10 Pa. C. C. 614.

Under this act proceedings will not be set aside because of a delay of six days in acquainting a justice of the peace of the taking up of swine: *McClain v. Warren*, 14 Pa. C. C. 397.

Proceedings under this act do not prevent a recovery in an action of trespass, damages done by swine running at large: *Robinson v. Fetterman*, 14 Atl. 245.

1983. Such Justice of Peace shall make publication thereof, by a paper affixed on his house, and on some tree near the high-road side, declaring the number, marks and appraisement, of all such swine, and by whom taken up, to the end that the owners may have notice thereof; unto whom the said Justice of the Peace shall pay the other moiety or half the value of such swine taken and appraised, he first deducting out of the same, two shillings for the appraisers, and two shillings for the Justice's clerk, for their trouble therein. But if it so happen, that the moiety or half part, as appraised, will not pay the said four shillings, then such takers up shall pay what shall be wanting thereof.

Sec. 2, Act of 1705, 1 Sm. Laws, Page 70.

1984. Provided nevertheless, That if no person appear, within twelve months after appraisement as aforesaid, to claim the moiety or half part of such swine, that then the said Justice shall pay what money he hath received, the charges as aforesaid first deducted, unto the overseer or overseers of the poor of the township where taken up, for the use of the poor of the said township, and the owners of such swine shall be thereupon debarred from any claim or right to the same, any law, usage or custom, to the contrary in any wise notwithstanding.

Sec. 3, Act of 1705, 1 Sm. Laws, Page 70.

1985. It shall not be lawful for any swine, hogs, shoats or pigs, to go at large in the towns of Philadelphia, Chester or Bristol, whether yoked and ringed or not; but if any such shall be found running at large, after the first day of the twelfth month next ensuing,

such swine, hogs, shoats or pigs, shall be forfeit, one half to him or them that shall take up the same, and the other half to the use of the poor of the respective towns, to be paid to the overseer or overseers accordingly, to the use aforesaid; the said town of Bristol being all the space contained within half a mile square, from the Mill creek, up the River Delaware.

Sec. 4, Act of 1705, 1. Sm. Laws, Page 70.

1986. WHEREAS by the said act, the relief provided for persons suffering by hogs trespassing in their fields or inclosures is limited to the extent of fourteen miles from the navigable parts of the river Delaware: Now, forasmuch as the country is become more populous, and it appears necessary to provide the same remedy for the inhabitants living in the other parts of this province: Therefore be it enacted, That the same penalties, rules and orders, enacted and directed to be observed by the aforesaid act within fourteen miles of the navigable parts of Delaware river, shall within one month after the publication hereof, be in force, and extended throughout the province of Pennsylvania, as fully and amply as if the same act were again herein repeated and enacted; any limitation in the aforesaid act, for preventing swine running at large, to the contrary in any wise notwithstanding.

Act of May 10, 1729, 1 Sm. L. 176, supplementing the Act of 1705, 1 Sm. L. 70.

CHAPTER XXXIX.

CANADA THISTLES.

1987. From and after the passage of this act it shall be the duty of every person or persons, and of every corporation holding land or lands in any county or counties of this Commonwealth, either by lease or otherwise, on which any Canada thistles or weeds commonly known as Canada thistles may be growing, to cut the same so as to prevent such thistles or weeds from going to seed, and the seed of the same from ripening, and every person or persons, or corporation as aforesaid, who shall or may have land as aforesaid, and who shall neglect or refuse to comply with the provisions of this act, shall forfeit and pay a fine of fifteen dollars to the treasurer of the school district in which such land may be situated, to be recovered the same as debts of like amount are now by law recoverable.

Sec. 1, Act of March 22, 1862, P. L. 164, as amended by Sec. 1, Act of April 24, 1885, P. L. 9.

1988. If any person or persons or corporation, so holding lands as aforesaid, on which any Canada thistles, or the weeds commonly known as such, shall be growing and likely to ripen seed thereon, shall neglect or refuse to cut and destroy the same so as to prevent the seed thereof from ripening, it shall and may be lawful for any person or persons, who may consider themselves aggrieved or about to be injured by such neglect or refusal, to inform by written notice any constable or supervisor of the township or district in which the said Canada thistles or weeds may be growing, whose duty it shall then be to give five days notice in writing to such person or persons or corporation to cut and destroy such thistles or weeds; and, on their neglect or refusal to cut and destroy the same at the end of five days, it shall be the duty of the officer giving such notice to enter upon such premises, with such other person or persons as he may employ, and cut down and destroy such Canada thistles, and the said officer or other persons so employed shall be entitled to recover from such person or persons or corporation, owning or holding land as aforesaid, compensation for necessary man labor, horse labor, and machinery, at the same rate as paid by the township or district for similar work on the roads, and the officer serving such notice shall likewise be entitled to a fee of fifty cents, together with six cents mileage for each mile circular necessarily traveled, to be recovered as debts of like amount before any justice or court in said counties.

Sec. 2, Act of March 22, 1862, P. L. 164, as amended by Sec. 1, Act of April 12, 1921, P. L. 124.

A constable or supervisor who is compelled to destroy Canada thistle is compelled to look to the owner of the real estate for his compensation and the township is not liable in case of the insolvency of the owner of the real estate: *Bilger v. Spring Township*, 20 Pa. C. C. 670.

1989. It shall be the duty of the supervisor or supervisors of the public roads or highways in every township or district as aforesaid, to cut and destroy in the same manner all such Canada thistles or weeds on or along such roads, and in case of unseated or mountain lands, whenever it shall come to the knowledge of either the supervisor or constable of the existence of any such Canada thistles or weeds thereon, it shall be his duty to notify the owner, or owners, or agents of said lands in writing, giving ten days' notice to cut and destroy the same as aforesaid, and upon failure to comply at the end of ten days such officer, or any person or persons employed by him, shall proceed in the manner hereinbefore provided, with like fees and compensation; and if any such constable or supervisor shall neglect or refuse to perform his duties as prescribed by this act, he shall be liable to a fine of ten dollars, the same to be sued for and recovered as aforesaid, by the party or parties aggrieved or about to be injured by such neglect or refusal.

Sec. 3, Act of April 24, 1885, P. L. 9.

CHAPTER XL.

PUBLIC BUILDINGS AND WORKS.

For other Provisions Relating to this Subject, see Sections 1220 to 1250, inclusive.

(a) State Art Commission.

1990. A State Art Commission is hereby created in the Department of Public Grounds and Buildings, consisting of five citizens of this Commonwealth, to be appointed by the Governor, by and with the advice and consent of the Senate, for the term of three years. All vacancies on the commission shall be filled by the Governor. Three members shall constitute a quorum.

Sec. 1, Act of May 1, 1919, P. L. 103.

1991. The members of the commission shall serve without compensation, but shall be paid all actual traveling and other necessary expenses incurred in the performance of their duties.

Sec. 2, Act of May 1, 1919, P. L. 103.

1992. The Governor shall appoint a president and a secretary of the commission. The commission shall have power to adopt its own rules of procedure, and to prescribe regulations for the submission to it of all matters within its jurisdiction.

Sec. 3, Act of May 1, 1919, P. L. 103.

1993. The Board of Public Grounds and Buildings shall furnish such offices for the commission as shall be required, and shall also furnish to it such clerical and other assistants as it may require, and fix the compensation of the persons so employed.

Sec. 4, Act of May 1, 1919, P. L. 103.

1994. From and after the approval of this act, no public monument, memorial, building, or other structure shall become the property of the Commonwealth or any subdivision thereof, by purchase, gift or otherwise, unless a design for the same, and the proposed location thereof, shall have first been submitted to, and approved by, the State Art Commission.

No construction or erection of any public monument, memorial, building or other structure, which is to be paid for, either wholly or in part, by appropriation from the State Treasurer or from any subdivision of the State, or for which the State or any subdivision is to furnish a site, shall be begun unless the design and proposed location thereof shall have been approved by such commission.

No monument, memorial, building, or other structure, belonging to any person or corporation, shall be erected upon or extend over any highway, stream, lake, square, park, or other public place, within any subdivision of this State, except the design for and the location thereof shall have been approved by such commission.

Sec. 5, Act of May 1, 1919, P. L. 103.

If any money is contributed by the State or by a county for the erection of a monument, the design for the same should be submitted to and approved by the State Art Commission created by the above act, before the monument is erected; but, if no money is contributed by the State or county, the Art Commission has no jurisdiction over the matter. A monument erected upon post office grounds becomes the property of the United States: *In re Monuments, Opinion of William L. Swope, Deputy Attorney General*, 69 P. L. J. 263.

1995. The commission shall submit annually to the Governor on, or before the first Monday of December, a report of its proceedings during that year, together with such recommendations as the commission shall deem conducive to the improvement of the Commonwealth or any subdivision thereof.

Sec. 6, Act of May 1, 1919, P. L. 103.

1996. The expenses of the commission and the compensation of employes shall be paid out of appropriations to be made to the Department of Public Grounds and Buildings.

Sec. 7, Act of May 1, 1919, P. L. 103.

(b) Work on Public Buildings to be Done Within Township.

1997. It shall be lawful for any city, county, township, borough, or other municipal divisions or subdivision of the Commonwealth, in the construction of any building or the performance of any public work, to provide, by ordinance, municipal regulation, or contract, that any portion or all of the work on the said building, or the work on the said public improvement, shall be done within the territorial limits of the said city, county, township, borough, or other municipal division or subdivision for which the said work is being performed.

Sec. 1, Act of July 6, 1917, P. L. 752.

This act was declared unconstitutional because in conflict with Art. III, Sec. 7, of the Constitution, prohibiting special legislation regulating labor, trade, mining or manufacturing. *Taylor v. Philadelphia*, 261 Pa. 458, reversing 26 D. R. 979.

1998. All ordinances, regulations, or contracts heretofore enacted, made, or executed by any city, county, township, borough, or other municipal division or subdivision of the Commonwealth, providing that all or any portion of any public work, done for said city, county, township, borough, or other municipal division or subdivision, shall

be done within the territorial limits of the said city, county, township, borough, or other municipal division or subdivision, are hereby validated: Provided, however, That in all other respects the said ordinance, regulation, or contract is in accordance with the existing law.

Sec. 2, Act of July 6, 1917, P. L. 752.

(c) **Contractors to Accept Provisions of Workmen's Compensation Act.**

1999. All contracts executed by the Commonwealth of Pennsylvania, or any officer or bureau or department thereof, on behalf of the said Commonwealth, or by any municipality, or any officer or bureau or board thereof, or by any municipal division or subdivision of the Commonwealth, which contracts shall involve the construction or doing of any work involving the employment of labor, shall contain a provision that the contractor shall accept, in so far as the work covered by any such contract is concerned, the provisions of the Workingmen's Compensation Act of 1915, and any supplements or amendments thereto which may hereafter be passed, and that the said contractor will insure his liability thereunder, or file with the Commonwealth, or the municipal corporation or board with whom the contract is made, a certificate of exemption from insurance from the Bureau of Workingmen's Compensation of the Department of Labor and Industry.

Sec. 1, Act of July 18, 1917, P. L. 1083.

2000. Every officer of the Commonwealth of Pennsylvania, or any bureau or department thereof, or of any municipality, or any bureau or department thereof, or any municipal division or subdivision of this Commonwealth, who shall sign, on behalf of the said Commonwealth or any municipality thereof, or any municipal division or subdivision thereof, any contract requiring in its performance the employment of labor, shall require, before the said contract shall be signed, proof that the said contractor with whom the contract is made shall have accepted the Workingmen's Compensation Act of 1915, and any supplements or amendments thereto which may be hereafter passed, and proof that the said contractor has insured his liability thereunder in accordance with the terms of the said act, or that the said contractor has had issued to him a certificate of exemption from insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry.

Sec. 2, Act of July 18, 1917, P. L. 1083.

2001. Any contract executed in violation of the provisions of this act shall be null and void.

Sec. 3, Act of July 18, 1917, P. L. 1083.

(d) **Contractors to Furnish Bond to Secure Payment of Labor and Material.**

2002. All counties, cities, boroughs, towns, townships, school districts, and poor districts shall, in the improvement of lands, or in the erection, alteration, addition, or repair, of edifices and public buildings, of any kind, in said districts, have the power to require of the contractor or contractors, employed in and about said improvements, an additional bond, with sufficient surety or sureties, providing for the payment of all labor and material entering into the said improvements.

Sec. 1, Act of May 10, 1917, P. L. 158.

2003. The labor and material-men furnishing labor and material in and for said improvements, upon the contract of said contractor, shall have the right according to law to sue in an action of assumpsit, in the name of the obligee for his or their use, upon said bond, upon proof of said contractor's failure to pay for said labor or material.

Sec. 2, Act of May 10, 1917, P. L. 158.

(e) **Township Commissioners May Make Regulations Governing Construction or Repair of all Buildings.**

2004. Every township of the first class of this Commonwealth shall have the power, by ordinance, to make regulations for the construction of new buildings and the repair of old ones, and to require that, before the work begins, municipal approval of the plans and specifications therefor be secured; and to provide for the inspection of such construction and repair, including the appointment of one or more building inspectors; to prescribe limits wherein none but buildings of non-combustible material and fire-proof roofs shall be erected or substantially reconstructed or removed thereinto; to provide penalties for the violation of such regulations. Any building erected, reconstructed, or removed contrary to the provisions of any ordinance passed for any of the purposes herein specified, is declared to be a public nuisance and abatable as such.

Sec. 1, Act of July 19, 1917, P. L. 1115.

(f) **Citizens Only to be Employed in Work on Public Buildings.**

2005. None but citizens of the United States shall be employed in any capacity in the erection, enlargement or improvement of any public building, or public work within this Commonwealth: Provided, That apprentices to a trade or profession who may be under

twenty-one years of age shall not be subject to the provisions of this act: Provided, That the provisions of this act shall not apply to public work where the cost thereof is paid in whole or in part from assessments of benefits.

Sec. 1, Act of June 25, 1895, P. L. 269.

In an action on a bond of a municipal contractor by the city to the use of persons employed on the work by the contractor, the surety on the bond cannot defend on the ground that the use plaintiffs, day laborers, were aliens employed by the contractor in violation of this act: *Philadelphia v. Mc-Linden* 205 Pa. 172, affirming 26 Pa. C. C. 287.

2006. The person or persons who may be by law empowered to enter into a contract for the erection, enlargement or improvement of any public building or public work shall insert in such a contract a stipulation or covenant that the provisions of section one of this act will be fully complied with.

Sec. 2, Act of June 25, 1895, P. L. 269.

(g) Displaying Flags on Public Buildings.

2007. After the approval of this act it shall be lawful to display the flag of Pennsylvania on any public building in this Commonwealth.

Sec. 1, Act of June 5, 1913, P. L. 419.

2008. After the approval of this act it shall be lawful to display the flag of any county, city, borough, or other municipality in the State on the public buildings of any county, city, borough, or other municipality of the State.

Sec. 2, Act of June 5, 1913, P. L. 419.

CHAPTER XLI.

WATER SUPPLY.

For other provisions relating to this subject, see sections 1180 to 1207, inclusive, section 381, Clause XVII, and section 386, Clause III.

2009. From and after the passage of this act, any water company obtaining its water supply, or any part thereof, from a source lying within the corporate limits of any municipality, city, borough, or township, in this Commonwealth, shall furnish such municipality and the inhabitants thereof with water, or otherwise forfeit its rights to a sufficient quantity of water, from such source, as will supply

the needs of such municipality, city, borough, or township, and the inhabitants thereof.

Sec. 1, Act of May 28, 1907, P. L. 278.

2010. Should any water company fail to furnish water to any municipality, city, borough, or township, or the inhabitants thereof, under the conditions described in section one of this act, it shall be the duty of the city or borough council, the commissioners or supervisors of the township, as the case may be, to pass a resolution setting forth the fact that the municipality and the inhabitants thereof are not being served with water, and that they desire the same; a copy of which resolution shall be served on the president, secretary, or attorney, of the water company having its source of supply within the corporate limits of the municipality thus affected; whereupon it shall be the duty of such water company to prepare a statement, setting forth in full its reasons for its failure to supply water to the affected district; which statement must also include any plans in contemplation, if there be any, to supply water at some future time to such district, stating when such supply may be expected; which statement must be verified by oath or affirmation by the president or secretary of such water company, and filed with the State Water Supply Commission, at Harrisburg, within thirty days from the date of service of the original notice on such water company by the municipality affected.

Failure on the part of the president or secretary of such water company to file a statement as above directed, shall be deemed a misdemeanor on their part, and, upon conviction thereof, they shall be sentenced to undergo an imprisonment not exceeding six months and pay a fine not exceeding one thousand dollars, or either or both, at the discretion of the court. If, in the judgment of the State Water Supply Commission, the reasons filed are of such a character as to indicate that no relief will be given in the municipality complaining, in the way of a water supply, within a reasonable time, then the said State Water Supply Commission may recommend to the Governor that letters patent be issued and a charter granted to any association of individuals who may legally form a water company, and who may apply for the same, and who will agree, in their application for a charter, to supply water to the municipality, city, borough, or township thus affected and the inhabitants thereof, and for that purpose to have the right to condemn, take, or appropriate a sufficient quantity of water, from any source of supply lying within the corporate limits of any municipality, city, borough, or township thus affected, as is adequate to supply the needs of such municipality, city, borough, or township, and the inhabitants thereof: Provided,

however, That any municipality, where conditions prevail such as are described in sections one and two of this act, shall have the right, with the consent and approval of the State Water Supply Commission, to condemn, take, or appropriate a sufficient quantity of water, from any source of supply lying within the corporate limits of any municipality or municipalities affected, as is adequate to meet the needs of such municipality or municipalities, and the inhabitants thereof, and no damages shall be collected by, or allowed to, any water company for any water appropriated under the provisions of this act.

Sec. 2, Act of May 28, 1907, P. L. 278.

2011. The Commissioner of Forestry and the Forestry Reservation Commission are hereby authorized and empowered to give to boroughs and other municipalities of this Commonwealth, upon such terms and subject to such restrictions and regulations as said Commissioner and Commission may deem proper, the privilege of impounding water upon any Forest Reservations, now owned or hereafter to be acquired by the Commonwealth, and of constructing, maintaining and operating lines of pipes upon and through said reservations for the purpose of conveying water therefrom, whenever in the judgment of the said Commissioner and Commission it shall be to the public interest so to do.

Sec. 1, Act of April 14, 1905, P. L. 156.

CHAPTER XLII.

PUBLIC LIBRARIES.

2012. The term "municipality" whenever used in this act, shall be interpreted as meaning any county, city, borough, town, or township, as the case may be, but shall not be interpreted as meaning school district.

Sec. 1, Act of July 20, 1917, P. L. 1143.

2013. The term "municipal authorities," wherever used in this act, shall be interpreted as meaning the mayor and council of any city, the burgess and council of any borough or town, the supervisors of any township, or the commissioners of any county, as the case may be.

Sec. 2, Act of July 20, 1917, P. L. 1143.

2014. Any municipality may make appropriations to establish or maintain, or both, a free, public, nonsectarian library, for the use of

the residents of such municipality. The appropriations for maintenance shall not exceed two mills on the dollar on all taxable property, annually. Special taxes for these purposes may be levied on the taxable property of the municipality, or the same may be levied and collected with the general taxes.

Sec. 3, Act of July 20, 1917, P. L. 1143.

2015. The municipal authorities of any municipality may submit to the qualified electors of such municipality, at any election, the question of establishing or maintaining, or both, a free, public, non-sectarian library, and must submit such question, if petitioned for by three per centum of the voters, at the next preceding general election. At such election the question of establishing an annual tax at a certain rate, not exceeding two mills on the dollar, on all taxable property of the municipality, shall be submitted and voted upon.

Sec. 4, Act of July 20, 1917, P. L. 1143.

2016. If the majority of votes cast upon this question shall be in favor of establishing such tax rate, the municipal authorities, at the first meeting following the official announcement of the result of such election, shall take the necessary steps to levy and collect the tax so levied, and shall appoint a board of library directors as provided in section nine of this act. Said board shall have exclusive control of the library so established or maintained, or both, and shall be governed as provided in other sections of this act.

Sec. 5, Act of July 20, 1917, P. L. 1143.

2017. The rate of tax so voted shall be an annual tax rate until another vote is taken changing the same: Provided, That the municipal authorities may increase said rate, not to exceed two mills on the dollar, on all taxable property of the municipality, without submitting the question to a vote. The tax shall be levied and collected in like manner as other taxes in the municipality, and shall be in addition to all other taxes, and shall be used for no other purpose than that of establishing or maintaining, or both, a free, public library. The money so raised shall be under the exclusive control of the board of library directors provided in section nine of this act.

Sec. 6, Act of July 20, 1917, P. L. 1143.

2018. If the residents of any municipality shall raise by popular subscription a sum equal to or exceeding the gross amount of a two-mill tax on all taxable property in the municipality, and shall offer the sum so subscribed to the municipality for the purpose of establishing a free, public, nonsectarian library, said sum shall be ac-

cepted by the municipal authorities, and shall be used for the sole purpose of establishing such library; provided, not more than two per centum of the said sum shall be subscribed by one individual or firm. Said subscription may be made payable in four quarterly payments, and shall be in such form as to be collectible by legal process if necessary.

Sec. 7, Act of July 20, 1917, P. L. 1143.

2019. In case of the establishment of a free, public, nonsectarian library under the provisions of section seven of this act, the municipal authorities shall immediately place the sum so subscribed under the control of a board of library directors, appointed as provided in section nine of this act, and proceed to levy and collect a tax at the annual rate of not less than one-half mill nor more than two mills on the dollar on all taxable property in the municipality, for the purpose of maintaining the library so established.

Sec. 8, Act of July 20, 1917, P. L. 1143.

2020. The affairs of all public libraries established or maintained, or both, under the provisions of the preceding sections of this act, shall be under the exclusive control of a board of library directors, to be composed of not less than five nor more than seven members, as may be decided by the municipal authorities, who shall appoint the members and fill any vacancies occurring from any cause. The first appointees shall be appointed as nearly as may be,—one-third for one year, one-third for two years, and one-third for three years. All appointments to fill the places of those whose terms expire shall be for a term of three years. Vacancies shall be filled for the unexpired terms. No member of this board shall receive any salary for his services as such.

Sec. 9, Act of July 20, 1917, P. L. 1143.

2021. The board of library directors shall organize as soon as may be after appointment, by the election of a president, a secretary, and a treasurer from its membership, and such other officers and agents as the board may deem necessary. The treasurer shall give bond to the municipality, with satisfactory surety, in such amount as the board may determine.

Sec. 10, Act of July 20, 1917, P. L. 1143.

2022. Two or more municipalities may unite in establishing or maintaining, or both, a free library, under the terms of an agreement entered into between them. Said agreement shall be in writing, and shall set forth the purpose, the terms as to support and control, and the conditions under which the agreement shall be altered or ter-

minated. Said agreement shall not be valid until it has been accepted by a majority vote of the municipal authorities of each of the municipalities agreeing thereto, and signed by the proper officer of each of said municipalities.

Sec. 11, Act of July 20, 1917, P. L. 1143.

2023. Any municipality may make appropriations, not to exceed two mills on the dollar on all taxable property in the municipality, to maintain or aid in the maintenance of a free library established otherwise than under the provisions of sections three, four, and seven of this act: Provided, That the municipal authorities shall be represented by two members of the board having control of the affairs of said library.

Sec. 12, Act of July 20, 1917, P. L. 1143.

2024. Any municipality may contract with the managers or owners of any existing nonsectarian library for the free use of such library by the residents of such municipality whether said library is located in the same or in another municipality. The term of such contract shall be three years, but it may be renewable as therein provided.

Sec. 13, Act of July 20, 1917, P. L. 1143.

2025. The municipality may appropriate annually, from the taxes levied and collected for municipal purposes, an amount not to exceed two mills on the dollar on all taxable property in the municipality, for the purpose specified in section thirteen of this act.

Sec. 14, Act of July 20, 1917, P. L. 1143.

2026. When the county commissioners of any county levy a tax for the purpose of establishing or maintaining, or both, a free, public, nonsectarian library, they are hereby authorized to exempt from said levy all taxable property in any municipality which is already levying a tax for the purpose of maintaining a free library: Provided, however, That the municipal authorities of such municipality may elect to join with the county in establishing or maintaining, or both, such library; in which case the taxable property in such municipality shall be included in such tax levy by the county commissioners, and the free library in such municipality shall become a part of the county library system and be supported from the tax for maintaining the county library.

Sec. 15, Act of July 20, 1917, P. L. 1143.

2027. All moneys appropriated for the establishment or maintenance, or both, of a free, public, nonsectarian library, and all moneys, if any, received from other sources for its use, shall be under the ex-

clusive control and shall be disbursed under the direction of the board of library directors, who shall make an annual report to the proper municipal authorities. The accounts of the treasurer of the board of library directors shall be audited as in the case of other municipal expenditures.

Sec. 16, Act of July 20, 1917, P. L. 1143.

2028. The annual report required by the last preceding section shall cover the fiscal year of the municipality. Said report shall contain an itemized statement of all receipts from whatever source and expenditures, and shall show the condition of the library and any branches thereof; the number of volumes, maps, pamphlets, and other material; the number added by purchase, gift, or otherwise; the number lost or withdrawn; the number of registered borrowers and readers; a classified statement of the circulation of material, with such other information and suggestions as may seem desirable. A copy of each report made to the municipal authorities shall be sent to the State Free Library Commission.

Sec. 17, Act of July 20, 1917, P. L. 1143.

2029. The board of library directors may establish branches, deposit stations, traveling libraries, and such other agencies as it may deem necessary to bring the books within convenient reach of all the residents.

Sec. 18, Act of July 20, 1917, P. L. 1143.

2030. Every library established or maintained, or both, under the provisions of this act, shall be free to the use of all the residents of the municipality, subject to such reasonable rules and regulations as the board of library directors may adopt, and the board may exclude from the use of the library any person who may wilfully violate such rules. The board may extend the privileges of such library to persons residing outside the limits of such municipality, upon such terms and conditions as the board may prescribe.

Sec. 19, Act of July 20, 1917, P. L. 1143.

2031. It shall be lawful for any municipality or any corporation, owning or managing a free, public, nonsectarian library, to take and hold any property, real or personal, or both, for library purposes; and any person desiring to make donations of books, money, personal property, or real estate for the benefit of a free, public, nonsectarian library, whether established or maintained under the provisions of this act or not, may vest the title thereto in the municipality or the corporation having control of the affairs of the said library, to be held and controlled by said municipality or corporation according to

the terms of the deed, gift, devise, or bequest; and, as to such property, the said municipality or corporation shall be held to be special trustee; but in the absence of restrictions by the terms of such donation, deed, gift, devise, or bequest, the said property shall be controlled and administered by the board of library directors or by the corporation, as the case may be.

Sec. 20, Act of July 20, 1917, P. L. 1143.

2032. Whenever there is in any municipality, a free, public, non-sectarian library which is open to the use of all the residents thereof, no new library shall be there established under the provisions of this act, but all public aid hereby authorized shall be given to such existing library, under proper agreement, to enable it to meet as far as possible the needs of such residents: Provided, however, That wherever there may be, at the time of the passage of this act, two or more such libraries receiving aid from the same municipality, the appropriation authorized by this act shall be divided between said libraries according to the terms of an agreement previously entered into between said libraries.

Sec. 21, Act of July 20, 1917, P. L. 1143.

2033. Any municipality is hereby authorized to purchase or set apart lands and buildings, or parts of buildings already owned by it, or both, or to erect or lease buildings, to be used for free library work, or to alter buildings already erected so as to make them suitable for such use, and it is hereby authorized to provide for the cost of the same as in the case of other buildings to be used for municipal purposes.

Sec. 22, Act of July 20, 1917, P. L. 1143.

2034. Any municipality may, by ordinance or resolution, purchase, enter upon and appropriate private property within its limits, for the purpose of erecting or enlarging public library buildings.

Sec. 23, Act of July 20, 1917, P. L. 1143.

2035. Whenever any municipality shall appropriate private property for public library purposes, and the municipality cannot agree with the owners thereof for the price to be paid therefor, or when by reason of the absence or legal incapacity of the owner thereof no such compensation can be agreed upon, the court of common pleas, or any judge thereof in vacation, on application thereto by petition, by the municipal authorities or any person interested, shall appoint a board of viewers for the assessment of damages caused by such appropriation, as in such cases provided.

Sec. 24, Act of July 20, 1917, P. L. 1143.

2036. The proceedings before the viewers for the allowance of damages for property taken, injured, or destroyed, and the proceedings upon their report, shall be as provided in other cases where such municipality appropriates private property for municipal purposes.

Sec. 25, Act of July 20, 1917, P. L. 1143.

2037. If five per centum of the registered votes of any municipality shall petition the municipal authorities to submit the question of creating a bonded indebtedness for purchasing grounds and erecting buildings for library purposes, the said authorities must submit such question at the next ensuing election.

Sec. 26, Act of July 20, 1917, P. L. 1143.

2038. Any building which shall be owned and occupied by a free, public, nonsectarian library, and the land on which it stands and that which is immediately and necessarily appurtenant thereto, shall be exempt from all county, city, borough, town, school, bounty, poor, or road taxes, notwithstanding the fact that some portion or portions of said building or lands appurtenant may be yielding rentals to the corporation or association managing such library: Provided, That the net receipts of said corporation or association from rentals shall be used solely for the purpose of maintaining the said library. All gifts, devises, grants, or endowments made to such a library, and for such purposes, shall be free from collateral inheritance tax; and any gifts, endowments, or funds of such a library which are invested in interest bearing securities, the income from which is used solely for the purchase of books or the maintenance of such library, shall be exempt from any State tax on money at interest.

Sec. 27, Act of July 20, 1917, P. L. 1143.

2039. This act shall not in any way affect any agreement or agreements heretofore made by any municipality under any prior act relating to free public libraries, but all such agreements are hereby ratified and are to continue as binding contracts between the parties.

Sec. 28, Act of July 20, 1917, P. L. 1143.

2040. Any one who shall wilfully cut, mutilate, mark, or otherwise injure any book, volume, map, chart, magazine, newspaper, painting, engraving, or other property of, or deposited in, any free library, shall be deemed to be guilty of a misdemeanor, and may be prosecuted for said offense before any court of competent jurisdiction; and, upon conviction thereof, shall be liable to a fine of not more than twenty-five dollars and costs of prosecution, or to imprisonment in the county jail not exceeding fifteen days, or both, at the discretion of the court; the said fine when collected to be for the use of the said library against which the aforesaid offense was committed.

Sec. 29, Act of July 20, 1917, P. L. 1143.

CHAPTER XLIII.

PLAYGROUNDS, PLAYFIELDS, GYMNASIUMS, PUBLIC BATHS,
SWIMMING POOLS, INDOOR RECREATION CENTERS,
AND FORESTS.

For other provisions relating to playgrounds and forests in townships of the first class, see sections 1295 to 1362, inclusive.

2041. The city council of any city of the second or third class, or the borough council of any borough, or the township supervisors or township commissioners, as the case may be, of any township, or the county commissioners of any county, may designate and set apart for use as playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers, any lands or buildings owned by such city, borough, township, or county, and not dedicated or devoted to other public use. Such city, borough, township, or county may, in such manner as may be authorized or provided by law for the acquisition of lands or buildings for public purposes in such city, borough, township or county, acquire lands or buildings therein for use as playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers, or, if there be no law authorizing such acquisition, the city council or the borough council or the township supervisors or township commissioners or the county commissioners, as the case may be, may acquire lands or buildings for such purposes by gift or purchase, or may lease lands or buildings in such city, borough, township, or county for temporary use for such purposes.

Sec. 1, Act of July 8, 1919 P. L. 784, as amended by sec. 1, Act of May 11 1921, P. L. 484.

2042. The authority to supervise and maintain playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers may be vested in any existing body or board or in a recreation board, as the city or borough council or the township supervisors or the township commissioners or the county commissioners shall determine. The local authorities of any such city, borough, township, or county may equip, operate, and maintain the playgrounds, playfields, gymnasiums, swimming pools, public baths, or indoor recreation centers, as authorized by this act. Such local authorities may, for the purpose of carrying out the provisions of this act, employ play leaders, recreation directors, supervisors, superintendents, or any other officers or employees, as they deem proper.

Sec. 2, Act of July 8, 1919, P. L. 784, as amended by Sec. 2, Act of May 11, 1921, P. L. 484.

2043. If the city or borough council or township supervisors or township commissioners or the county commissioners shall determine that the power to equip, operate, and maintain playgrounds, playfields, gymnasiums, public baths, swimming pools, or recreation centers shall be exercised by a recreation board, they may establish, in said city, borough, township, or county such recreation board, which shall possess all the powers, and be subject to all the responsibilities, of the respective local authorities under this act. Such board, when established, shall consist of five persons, and when established in a city or borough, two of the members shall be members of the school board. The board shall be appointed by the mayor of such city or the burgess of such borough or the supervisors or commissioners of such township or the commissioners of such county, and shall serve for terms of five years or until their successors are appointed, except that the members of such board first appointed shall expire annually thereafter. Members of such board shall serve without pay. Women shall be eligible for appointment. Vacancies in such board occurring otherwise than by expiration of term shall be for the unexpired term, and shall be filled in the same manner as original appointments.

Sec. 3, Act of July 8, 1919, P. L. 784, as amended by Sec. 3, Act of May 11, 1921, P. L. 484.

2044. The members of a recreation board, established pursuant to this act, shall elect their own chairman and secretary and select all other necessary officers, to serve for a period of one year, and may employ such persons as may be needed as authorized by this act. Such board shall have power to adopt rules and regulations for the conduct of all business within its jurisdiction.

Sec. 4, Act of July 8, 1919, P. L. 784.

2045. Any two or more cities, townships, or boroughs, or any city, township, or borough, or any city, township or borough, and county, may jointly acquire property for, and operate and maintain, any playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers. Any school district shall have the power to join with any city, borough, township, or county in equipping, operating, and maintaining playgrounds, playfields, gymnasiums, public baths, swimming pools, and indoor recreation centers, and may appropriate money therefor.

Sec. 5, Act of July 8, 1919, P. L. 784, as amended by Sec. 4, Act of May 11, 1921, P. L. 484.

2046. The city or borough council or the township supervisors or the township commissioners, as the case may be, or the county com-

missioners, may issue bonds for the purpose of acquiring lands or buildings for playgrounds, playfields, gymnasiums, swimming pools, public baths, or indoor recreation centers and for the equipment thereof.

Sec. 6, Act of July 8, 1919, P. L. 784, as amended by Sec. 5, Act of May 11, 1921, P. L. 484.

2047. All expenses incurred in the operation of such playgrounds, playfields, gymnasiums, swimming pools, public baths, and indoor recreation centers, established as herein provided, shall be payable from the treasury of such city, borough, township, county, or school district. The local authorities of such city, borough, township, county, or school district having power to appropriate money therein, may annually appropriate and cause to be raised by taxation such tax, not to exceed two mills on the dollar of the assessed valuation of taxable property in such city, borough, township, county, or school district, for the purpose of maintaining and operating playgrounds, playfields, gymnasiums, public baths, swimming pools, and recreation centers.

Sec. 7, Act of July 8, 1919, P. L. 784, as amended by Sec. 6, Act of May 11, 1921, P. L. 484.

2048. The county commissioners of several counties of this Commonwealth are hereby authorized to appropriate money for and to provide for the erection of monuments or memorials commemorating the service of the soldiers, sailors, and marines, in the war with Germany and Austria. The style and character of such monuments or memorials shall be approved by the State Art Commission.

Sec. 1, Act of June 4, 1919, P. L. 374.

2049. The county commissioners are authorized, in order to prevent duplication, to appropriate money to assist any individual, private corporation, city, borough, town, or township in the erection of any monument or memorial for said soldiers, sailors, and marines. Before any such appropriation is made, the style and character of such monument or memorial shall be approved by the State Art Commission.

Sec. 2, Act of June 4, 1919, P. L. 374.

2050. The Department of Forestry is authorized to enter into agreements for the prevention and suppression of forest fires with county, township, municipal and private agencies owning or controlling woodlots, forests, or wild lands, or whose activities in whole or in part are directed toward the prevention and suppression of forest fires. The department is authorized to expend from its general forest fire appropriation, for such protective and preventive purposes as it deems effective, a sum of money equal in amount to the amount

which shall be expended by such agencies in accordance with such agreements. All expenditures must first be presented to the Department of Forestry in monthly statements, in form and manner prescribed for the payment of any sum from the forest fire appropriation. The Commissioner of Forestry shall audit the same and transmit them to the Auditor General, who shall then draw his warrant for one-half of the amount of expenditures approved by the Commissioner of Forestry.

Sec. 1, Act of June 4, 1915, P. L. 815.

2051. Every county, township, municipal or private agency working under agreement with the department in accordance with this act, shall render to the department, at the end of each calendar year, a report setting forth a complete itemized statement of expenditures made with a view to the prevention and suppression of forest fires, and stating such other information as the department may request. The financial statement and facts relating thereto shall be accompanied by an affidavit subscribed to by the person authorized to make the report.

Sec. 2, Act of June 4, 1915, P. L. 815.

CHAPTER XLIV.

ACQUISITION OF LAND FOR USE OF NATIONAL GUARD

2052. It shall be lawful for any county, city, borough, town or township to acquire, by purchase, or by gift, or by the right of eminent domain, any land for the use of the National Guard of Pennsylvania, and to convey such lands so acquired to the Commonwealth of Pennsylvania to assist the Armory Board in the erection of armories. The proceedings for the condemnation of lands under the provisions of this act and for the assessment of damages for property taken, injured or destroyed shall be taken in the same manner as is now provided by law for the condemnation of lands for public purposes in counties, cities, boroughs, towns, and townships.

Sec. 1, Act of May 12, 1921, P. L. 554.

2053. The power conferred by this act shall not be exercised to take any church property, graveyard, cemetery, or any dwelling house, or the curtilage of the same in the actual occupancy of the owner.

Sec. 2, Act of May 12, 1921, P. L. 554.

CHAPTER XLV.

PUBLIC HEALTH.

(a) Boards of Health in Townships of the First Class.

2054. A board of health shall be established and maintained in each borough and township of the first class in this Commonwealth, within three months after the passage of this act.

Sec. 1, Act of June 12, 1913, P. L. 471.

2055. The board of health shall be composed of five members, at least one of whom shall be a reputable physician of not less than two years experience in the practice of his profession. The members of the board of health shall be appointed by the president of the borough councils, or by the chairman of the board of commissioners of such township. At the first appointment, one member shall be appointed to serve for one year, one for two years, one for three years, one for four years, and one for five years; and thereafter one member shall, in like manner, be appointed each year, to serve for five years. The members of the board of health shall be residents of the municipality for which they are appointed, and shall serve without compensation: Provided, however, if any member of the board shall be elected to the office of secretary, he shall be entitled to receive a salary, fixed by the board, for that office.

Sec. 2, Act of June 12, 1913, P. L. 471.

Members of a board of health in a borough may be removed at the pleasure of the president of council, who appoints them: *Howells v. Morris*, 44 Pa. C. C. 139, s. c. 12 Sch. 55, 7 M. L. R. 194, 25 D. R. 946.

Members of a board of health in a township may be removed by the chairman of the board of commissioners of the township, at his own pleasure and without complaint having been entered against them: *Nichol, et al. v. Mussman, et al.*, 64 P. L. J. 435, s. c. 8 M. L. R. 25, D. R. 217.

2056. The members of the board shall severally take and subscribe to the oath prescribed for borough or township officers; and shall annually organize by electing a president from among the members of the board, a secretary who may or may not be a member of the board, and a health officer who shall not be a member of the board. The secretary and the health officer shall receive such salary as may be fixed by the board, and ratified by the borough council or by the board of commissioners of the township of the first class, and shall serve for a period of one year, or until such time thereafter as their successors may be elected and qualified. They shall severally give bond to the borough or township, in such sums as may be fixed

by ordinance, for their faithful discharge of the duties and shall also take and subscribe to the oath required by the members of the board.

Sec. 3, Act of June 12, 1913, P. L. 471.

A salary for an assistant health officer is not contemplated in this section :
Mason v. Township of Hanover, et al, 19 Luz. 239-247.

2057. The secretary of the board shall keep the minutes of their proceedings; shall keep accurate accounts of the expenditures of the board; shall draw and certify, under the seal of the board of health, all orders upon the treasurers of the borough or township of the first class, for the payment of moneys on account of the board of health, and shall present the same to the president of the board for his approval; shall render statements for the expenditures to the board at each stated meeting, or as frequently as they may require; shall prepare, under the directions of the board, the annual report to the borough council or township commissioners, together with the estimate of appropriation needed for the ensuing year; he shall report to the State Department of Health at the end of each week, and for the fraction of each week occurring at the end of each month, the cases of communicable disease reported to the board of health, on the form provided for that purpose by the State Department of Health; and shall also make an annual report to the State Department of Health; and shall make such other reports and perform such other duties as the board may require.

Sec. 4, Act of June 12, 1913, P. L. 471.

2058. It shall be the duty of the health officer to attend all stated and special meetings of the board of health, and at all times be ready and available for the prompt performance of his official duties. He shall placard and quarantine all premises upon which cases of communicable disease exist, which have been reported to the board of health or of which he or the board of health may have knowledge, which are required by law, or by regulation of the State Department of Health or of the local board of health, to be placarded and quarantined; and shall disinfect such premises upon the expiration of the quarantine period, and the recovery of the last person therein suffering from such disease. He shall serve written notice on teachers and persons in charge of public, parochial, Sunday, and other schools, requiring the exclusion from school of children who are suffering from or who reside in the same premises with other persons who are suffering from communicable diseases; and shall make sanitary inspections, and shall execute the orders of the board of health, and shall in the performance of his duties have the power and authority of a policeman.

Sec. 5, Act of June 12, 1913, P. L. 471.

2059. The said board of health shall have the power, and it shall be their duty, to enforce the laws of the Commonwealth, the regulations of the State Department of Health, and to make and enforce such additional rules and regulations to prevent the introduction and spread of infectious or contagious diseases, by the regulation of intercourse with infected places, by the separation of infected persons, and persons who shall have been exposed to any infectious or contagious disease, and by abating and removing all nuisances which they shall deem prejudicial to the public health; to mark infected houses or places, to prescribe rules for the construction and maintenance of house-drains, wash-pipes, soil-pipes and cesspools; and to make all such other rules and regulations as they shall deem necessary for the preservation of the public health. They shall also have power, with the consent of councils or township commissioners, in case of a prevalence or apprehended prevalence of any contagious or infectious diseases in their borough or township, to establish one or more emergency hospitals, and to make provisions and regulations for the maintenance and management of the same.

The board shall also have the power to make, enforce, and cause to be published, all necessary rules and regulations for carrying into effect the powers and functions with which they are invested by law, and the power and authority relating to the public health conferred on the boroughs and townships of the first class. Such rules and regulations, when approved by the borough council and burgess or by the township commissioners, as the case may be, and when advertised in the same manner as other ordinances, shall have the force of ordinances of the borough or township respectively; and all penalties or punishment prescribed for the violation thereof, as well as the expenses actually and necessarily incurred in carrying such rules and regulations into effect, shall be recoverable, for the use of the borough or township, respectively, in the same manner as penalties for violation of the ordinances of the borough or township, and subject to the like limitations as to the amount thereof.

Sec. 6, Act of June 12, 1913, P. L. 471, as amended by Sec. 1, Act of April 14, 1915, P. L. 114.

Without the consent of the board of health, the borough council has no power to repeal a rule of the board of health, although the rules had to be originally approved by council: *Carlisle Borough v. Eppley No. 1*, 9 M. L. R. 220, s. c. 27 D. R. 189.

Boards of health have no power to arrest those violating their rules and regulations nor to have them punished by fine and imprisonment unless such rules and regulations are duly enacted into ordinances and advertised and promulgated the same as other ordinances: *In re Public Health, Opinion by B. J. Myers, Deputy Attorney General*, 68 P. L. J. 480

A board of health in a township of the first class may, on its own initiative, order its proper officer or employe to institute prosecutions for the

violations of the duly promulgated regulations of the State Department of Health. *In re Health, Opinion by Frank M. Hunter, Deputy Attorney General, 68 P. L. J. 665.*

2060. Said board of health shall have the power as a body, or by committee, as well as the health officer, together with their assistants, subordinates, and workmen, under and by order of the said board, to enter at any time upon any premises in the borough or township upon which there is suspected to be any infectious or contagious disease, or nuisance detrimental to the public health, for the purpose of examining and abating the same.

Sec. 7, Act of June 12, 1913, P. L. 471.

2061. The board of health may inspect house drains, waste and soil-pipes, cesspools, water-closets, slaughter-houses, hog pens, stables, stable-yards, and any conditions or places whatsoever, in the borough or township of the first class, which may constitute a nuisance or a menace to public health; and whenever any condition or place in the borough or township of the first class is found by them to be a nuisance or a menace to the health of the people of the borough or township of the first class, they shall issue a written order of abatement, directed to the owner, or agent of the owner, of the premises, stating that the conditions specified therein constitute a nuisance or a menace to health, and ordering an abatement thereof within such time as may be specified by them in such order. In case such order of abatement is not obeyed within the time specified therein, they shall thereupon issue a further written order to the health officer, directing him to remove or abate the same; which order shall be executed by him and his subordinates and workmen, and the expense thereof shall be recoverable from the owner of the premises upon or from which the nuisance or menace to health is abated or removed, in the same manner as debts of like character are now collected by law; or **the said board of health may proceed to enforce such other remedy, or inflict such penalty, as may by ordinance of the borough or township of the first class be provided.**

Sec. 8, Act of June 12, 1913, P. L. 471.

A board of health in a first class township may abate conditions declared to be nuisances by regulations of the State Department of Health and recover the cost of such abatement from the owner of the premises in the manner provided by the above section. *In re Health, opinion by Frank M. Hunter, Deputy Attorney General, 68 P. L. J. 665.*

2062. It shall be the duty of the board of health to submit annually to the councils or township commissioners, before the commencement of the fiscal year, an estimate of the probable expenditures of the board during the ensuing year; and councils or township commis-

sioners shall then proceed to make such appropriation thereto as may be necessary; and the said board shall, in the month of January of each year, submit a report, in writing, to councils or township commissioners, of its operations and expenditures for the preceding year, together with such other information on subjects relative to the sanitary conditions or requirements of the borough or township as may be necessary, and councils or township commissioners shall publish the same in their official journal.

Sec. 9, Act of June 12, 1913, P. L. 471.

Where a statement of the previous year's expenses was regarded "an estimate of the probable expenditures of the board during the ensuing year," *Mason v. Township of Hanover et al.*, 19 Luz. 239-246.

2063. Whenever, in the opinion of the Commissioner of Health of the Commonwealth of Pennsylvania, conditions found by him to exist in any borough or township of the first class in this Commonwealth shall constitute a menace to the lives and health of people living outside the corporate limits of such borough or first class township, or if it be known to him that any borough or township of the first class is without an existing or efficient board of health, the Commissioner of Health may enter, and take full charge of and administer the health laws, regulations, and ordinances in such borough or township of the first class; and may continue in charge thereof until he shall decide that a competent, efficient board of health has been appointed and qualified for such borough or township of the first class, and is ready, able, and willing to assume and carry into effect the duties imposed upon it by law.

Sec. 10, Act of June 12, 1913, P. L. 471.

2064. All expenses incurred by any local board of health, its officers or employes, in the performance of the duties imposed upon it by law, and all expenses incurred by the Commissioner of Health in accordance with the provisions of section ten of this act, shall be paid by the borough or township of the first class wherein such duties are performed, in the same manner as other expenses of such borough or township of the first class are paid.

Sec. 11, Act of June 12, 1913, P. L. 471.

2065. Whenever expenses incurred by the Commissioner of Health in the administration of health laws in any borough or township of the first class, in accordance with the provisions of this act, shall remain unpaid by said borough or township of the first class for a period over three months after a statement of such expense has been rendered by him to such borough or township of the first class, and demand for payment by him made, he shall, with the approval of the

Governor, institute, in the name of the Commonwealth as plaintiff, an action of assumpsit against such borough or township of the first class, for the collection of such expense from the borough or township of the first class, in the same manner as debts of like amount are collected by law: Provided, however, That, upon the trial of any such action of assumpsit, the reasonableness of the expenditures made by the Commissioner of Health shall be submitted to the jury for its determination.

Sec. 12, Act of June 12, 1913, P. L. 471.

2066. All expenses incurred by the Commissioner of Health in the administration of health laws in any borough or township of the first class, when paid to him by such borough or township of the first class, or when collected by him, shall be returned by him to the State Treasurer, who shall credit the amount so received to the appropriation made to the Department of Health.

Sec. 13, Act of June 12, 1913, P. L. 471.

(b) Quarantine Regulations.

2067. The following diseases are hereby specifically declared to be communicable; to wit,

Actinomycosis, anthrax, bubonic plague, cerebrospinal meningitis (epidemic), (cerebrospinal fever, spotted fever), chicken-pox, Asiatic cholera, diphtheria (diphtheritic croup, membranous croup, putrid sore throat), epidemic dysentery bacillary or amebic dysentery), erysipelas, German measles, glanders (farcy), rabies (hydrophobia), leprosy, malarial fever, measles, mumps, pneumonia (true), puerperal fever, relapsing fever, scarlet fever (scarlatina, scarlet rash), smallpox (variola, varioloid), tetanus, trachoma, trichiniasis, tuberculosis in any form, typhoid fever, para typhoid fever, typhus fever, whooping-cough, yellow fever, anterior poliomyelitis, impetigo contagiosa, pallagra, scabies, or uncinariasis.

The Department of Health may, when it deems it necessary to safeguard human life and health, declare as communicable diseases additional to those hereinabove specifically so declared, but only in the following manner; that is to say,

The Commissioner of Health shall call a meeting of the advisory board, five days written notice of which shall be sent to each member of the board. The notice shall state the time and place of meeting and the fact that a proposed regulation will be presented declaring a certain disease or diseases—setting it or them forth by name—to be communicable. The notice shall also state such of the diseases

as should, in the opinion of the Commissioner of Health, be quarantinable or reportable, or both, and the quarantine period therefor.

If at such meeting four members of the advisory board personally present shall vote affirmatively upon such proposed regulation, any disease therein set forth is or are hereby declared communicable, with the same force and effect as if expressly enumerated in this act. Any such disease is hereby further declared quarantinable or reportable, or both, as may be provided in the regulation, with the force and effect hereinbefore referred to. Printed notice of the regulation shall be promulgated in the same manner as is provided by law in the case of other regulations of the Department of Health.

The regulation may be amended at such meeting so as to eliminate some or any of the diseases set forth in the notice, but no disease shall be declared communicable which is not contained in the notice.

Every physician practicing in any portion of this Commonwealth who shall treat or examine any person suffering from or affected with any disease herein specifically declared communicable and reportable or by regulation declared communicable and reportable, shall, if said case shall be located in a township of the first class, a borough, or a city, forthwith make a report in writing to the health authorities of said township, city or borough; and, if said case shall be located in a township of the second class, or a city, borough, or township of the first class not having a board of health or body acting as such, to the health officer appointed by the State Department of Health for such district; upon blanks supplied for that purpose, in which report he shall, over his or her own signature, state the name of the disease, and the name, age, sex, color, nativity, and occupation, if any, of the person suffering therefrom, together with the street and house number of the premises in which said person may be located, or otherwise sufficiently designate the same, the date of the onset of the disease, the name and occupation of the householder in whose family the disease may have occurred, the number of children in said household attending school and the name or names of the school or schools so attended, together with such information relating to said case as may be required by said health authorities and the State Department of Health.

Sec. 1, Act of July 17, 1919, P. L. 1010.

Under the Act of June 18, 1895, P. L. 203, it was held that the failure of a physician to report a contagious disease was not an indictable offense, but a statutory wrong punishable by summary fine: *Com. v. Chadman*, 11 D. R. 430, s. c. 19 Lane, L. R. 117.

Under this section and a resolution of the State Department of Health declaring gonorrhea and syphilis to be transmissible diseases subject to quarantine. A person having syphilis may be quarantined in the county jail. *County of Erie v. Fox, Sheriff*, 2 Erie 227.

2068. Upon receipt by the health authorities of any township of the first class, borough, or city, or by the health officer of the State Department of Health, of a report of the existence of a case of anthrax, bubonic plague, cerebrospinal meningitis (epidemic,) (cerebrospinal fever, spotted fever), chickenpox, Asiatic cholera, diphtheria (diphtheritic croup, membranous croup, putrid sore throat), German measles, glanders (farcy), leprosy, measles, mumps, scarlet fever (scarlatina, Scarlet rash), smallpox (variola, varioloid), typhoid fever, para typhoid fever, typhus fever, whooping cough, yellow fever, or any disease declared communicable and quarantinable by regulation as hereinbefore provided, the said health authorities, or a health officer or a medical representative of the State Department of Health, as the case may be, shall quarantine or cause to be quarantined the premises in which such disease exists and any person or persons who has or have been exposed thereto, or any person or persons who in the opinion of the attending physician, health authorities, or a medical representative of the State Department of Health, is reasonably suspected of having such disease, by quarantining such person or persons either upon the premises in which the disease exists or in a place designated in this State for the isolation, control, and treatment of communicable disease, in the manner prescribed by the rules and regulations both of the said health authorities and the State Department of Health; and shall post or cause to be posted, in a conspicuous place or places upon the premises in which the said disease may be located, a placard or placards, upon which shall be printed in conspicuous letters the name of the disease from which the person or persons in said house or premises is or are suffering, with the warning that said premises are quarantined, that no person or persons other than the attending physician and trained nurse shall enter or leave the said premises, except by permission of the health authorities, and setting forth the penalties prescribed by this act for violations of quarantine: Provided, That, in the case of a person or persons suspected of suffering from disease or diseases of the generative organs, no quarantine shall be established or caused to be established by health officers or representatives of the State Department of Health until it is reasonably certain, from personal examination or laboratory tests or from evidence which has been furnished to the State Health Department or to any board, bureau, or department of health, that the person or persons are suffering from diseases of the generative organs, but this proviso shall not prevent the quarantine of persons known to be prostitutes and reasonably suspected of suffering from diseases of the generative organs and of being a menace to the health of a community: Provided further, That variola or varioloid shall be placarded as "smallpox" and that diphtheritic

croup, membranous croup, and putrid sore throat shall be placarded as "diphtheria," that scarlatina and scarlet rash shall be placarded as "typhoid fever": Provided further, That in addition to the placarding, said health authorities may, for the purpose of enforcing quarantine regulations, place a guard or guards over the said house or houses or premises.

Sec. 2, Act of July 17, 1919, P. L. 1010, as amended by Sec. 1, Act of Apr. 21, 1921, P. L. 207.

2069. The said placard or placards shall remain in place until the expiration of the quarantine period fixed by the health authorities and the recovery, death, or removal of the person or persons affected; and shall only be removed by the health officer, at which time he shall disinfect the premises, except for typhoid fever and para typhoid fever, in accordance with the rules and regulations of the health authorities and the State Department of Health regarding the destruction and disinfection of infected bedding, clothing, and other articles which have been exposed to infection and the disinfection of rooms, premises, and inmates.

Sec. 3, Act of July 17, 1919, P. L. 1010.

2070. The quarantine period for anthrax, bubonic plague, cerebrospinal meningitis epidemic), (cerebrospinal fever, spotted fever), Asiatic cholera, typhus fever, yellow fever, relapsing fever, leprosy, and whooping-cough shall be until the recovery, death, or removal of the patient so suffering, and shall be determined in accordance with the rules and regulations of the health authorities. The quarantine period for smallpox (variola, varioloid) and scarlet fever (scarlatina, scarlet rash) shall be a minimum period of thirty days or until such time thereafter as the last person in the premises so suffering shall have fully recovered or until death or removal. The quarantine period for diphtheria, diphtheritic croup, membranous croup, putrid sore throat) shall be a minimum period of twenty-one days or until complete recovery or the death or removal of the patient: Provided, That if antitoxin has been used for curative purposes for the patient and for the immunizing of all of the inmates of the premises, and two negative bacteriological cultures have been secured from the diseased area of each patient on the premises, for two successive days, the minimum period of quarantine may be fourteen days. The quarantine period for measles, German measles, chicken-pox, and mumps shall be for a minimum period of sixteen days or until the recovery

of the last person on the premises so suffering or until complete recovery or the death or removal of the patient.

Sec. 4, Act of July 17, 1919, P. L. 1010, as amended by Sec. 2, Act of April 21, 1921, P. L. 207.

Under the above section the period of quarantine in cases of cerebrospinal meningitis ends with the death of the person who has the disease, unless it is extended by rule or regulation of the local health authorities, or by the State Department of Health, *Commonwealth v. Cutler et al.* 50 Pa. C. C. 610.

2071. No child or other person suffering from anthrax, bubonic plague, cerebrospinal meningitis (epidemic), (cerebrospinal fever, spotted fever), Asiatic cholera, smallpox (variola, varioloid,) typhus fever, yellow fever, relapsing fever, leprosy, diphtheria (diphtheritic croup, membranous croup, putrid sore throat), measles, German measles, glanders (farcy), chicken-pox, mumps, whooping-cough or any disease declared communicable and quarantinable by regulation as hereinbefore provided, shall be permitted to attend any place of amusement or any church or any other public gathering, or to be exposed on any public street or in any store, shop, factory, or other place of business, or be permitted to attend any public, private, parochial, Sunday, or other school; and the teachers of public schools and the principals, superintendents, teachers, or other persons in charge of private, parochial, Sunday, or other similar schools are hereby required to exclude any of such persons from said schools; such exclusion to continue until the case has recovered, the quarantine lifted, and the premises thoroughly disinfected.

Sec. 5, Act of July 17, 1919, P. L. 1010.

2072. No child or other person suffering from scarlet fever (scarlatina, scarlet rash) shall be permitted to attend any place of amusement or any church or other public gathering, or to be exposed on any public street or in any store, shop, factory or other place of business, or be permitted to attend any public, private, parochial, Sunday, or other school; and the teachers of public schools and the principals, superintendents, teachers, or other persons in charge of private, parochial, Sunday, or other schools are hereby required to exclude any and all such persons and children from said school; such exclusion to continue for a period of ten days following the removal of quarantine and a thorough disinfection of the premises, subject to a certificate of complete recovery furnished to the health authorities by the attending physician.

Sec. 6, Act of July 17, 1919, P. L. 1010.

2073. No child or other person residing in the same premises with any person suffering from anthrax, bubonic plague, cerebrospinal

al meningitis (epidemic), (cerebrospinal fever, spotted fever), Asiatic cholera, smallpox (variola, varioloid), typhus fever, yellow fever, scarlet fever, (scarlatina, scarlet rash), relapsing fever, leprosy, diphtheria (diphtheritic croup, membranous croup, putrid sore throat), measles, German measles, chickenpox, mumps, or any disease declared communicable and quarantinable by regulation as hereinbefore provided, shall be permitted to attend any place of amusement or any church or other public gathering, or to be exposed, except by permission of the health authorities, on any public street or in any store, shop, factory, or other place of business, or be permitted to attend any public, private, parochial, Sunday, or other schools; and the teachers of public schools and the principals, superintendents, teachers or other persons in charge of private, parochial, Sunday or other similar schools are hereby required to exclude any and all such persons from said schools; such exclusion to continue until quarantine is lifted and the premises thoroughly disinfected.

Sec. 7, Act of July 17, 1919, P. L. 1019.

2074. Any child or person residing on the same premises with any person suffering from anthrax, cerebrospinal meningitis (epidemic), (cerebrospinal fever, spotted fever), or typhus fever may be allowed, after taking a disinfecting bath and putting on disinfected clothing, to remove from the said premises and take up his or her residence on other premises, and may, after such removal, be admitted into any of the said schools; and any child or person residing on the same premises with any one suffering from diphtheria (diphtheritic croup, membranous croup, putrid sore throat) may be allowed, after taking a disinfecting bath and putting on disinfected clothing and after antitoxin has been administered for immunizing purposes, to remove from the said premises and take up his or her residence on other premises occupied only by adults, and may, after five days from said removal, be admitted into any of the said schools; and any child or person residing on the same premises with any child suffering from scarlet fever (scarlatina, scarlet rash), measles, German measles, mumps, or chicken-pox may be allowed, after taking a disinfecting bath and putting on disinfected clothing, to remove from the said premises and take up his or her residence on other premises occupied only by adults or by children who are immune to the disease (scarlet fever, scarlatina, scarlet rash, measles, German measles, mumps, or chicken-pox) existing on the said premises from which the said child or person has removed—such immunity being shown by the official health records,—and may, fourteen days after such removal, be admitted to any of the said schools; Provided, That if the child or person residing on the same premises with any person suffering from any

of the said diseases (scarlet fever, scarlatina, scarlet rash, measles, German measles, mumps, or chicken-pox), and removing therefrom as above provided, is himself or herself immune from the disease existing on the said premises by virtue of a former attack, this fact being shown by the official health records or by other evidence satisfactory to the health authorities, such immune child or person may, on the day following such removal, be admitted to any of the said schools; and any child or person residing on the same premises with any person suffering from relapsing fever may be allowed, after taking a disinfecting bath and putting on disinfected clothing, to remove from the said premises and take up his or her residence on other premises, and may, after ten days from such removal, be admitted to any of the said schools. In the case of children or persons residing on the same premises with any child or person suffering from any disease declared communicable and quarantinable as hereinbefore provided, The Department of Health, by general regulation, shall determine the conditions upon which said child or person may take up his residence upon other premises or be admitted to school.

Sec. 8, Act of July 17, 1919, P. L. 1010.

2075. That every teacher, principal, superintendent, or other person or persons in charge of any public, private, parochial, Sunday, or other school having in any such school any child or person showing an unusual rash or skin eruption, or complaining of soreness in the throat, or having symptoms of whooping cough, or any disease of the eye, shall immediately exclude such child or other person from the schools pending the action of the health authorities, and shall report such fact to the health authorities, and shall report such fact to the health officer of the city, borough, or township, giving the name and residence of such child or other person.

Sec. 9, Act of July 17, 1919, P. L. 1010.

2076. No child or other person excluded from any school by the provisions of this act shall be readmitted thereto, unless he or she or some person on his or her behalf shall furnish to the principal, superintendent, or teacher, or other person in charge of said school, a certificate setting forth that the conditions for such readmission prescribed by this act have been complied with: which certificate shall be signed by a person to be designated for that purpose, in cities, boroughs, and townships of the first class, by the health authorities thereof exclusively, and in townships of the second class, and cities, boroughs, and townships of the first class not having boards of health or bodies acting as such, by the State Department of Health; and the registry of all public, private, parochial, Sunday, and other schools shall exhibit the names and residences of all chil-

dren and persons excluded therefrom or readmitted thereto agreeably to the provisions of this or any other act of Assembly; and said register shall be open at all times to the inspection of the city, borough, or township authorities, and the State Department of Health and their respective officers and agents.

Sec. 10, Act of July 17, 1919, P. L. 1010.

2077. Blanks whereon to make the reports and certificates required by this act shall be supplied, in cities, boroughs, and townships of the first class, by the health authorities thereof, respectively; and in townships of the second class, and in cities, boroughs, and townships of the first class not having boards of health or bodies acting as such, by the State Department of Health.

Sec. 11, Act of July 17, 1919, P. L. 1010.

2078. It shall be the duty of the health authorities of cities, boroughs, and townships of the first class, respectively, to furnish daily, by mail or otherwise, to principals, superintendents, teachers, and other persons in charge of public, private, parochial, Sunday, and other schools, a printed or written bulletin, containing the name, location, and disease of all persons suffering from any of the diseases comprehended by sections five and six of this act, upon receipt by them of reports of such cases from physicians as required by section one of this act; and such bulletin shall be daily furnished to such persons in charge of such schools in townships of the second class, and in cities, boroughs, and townships of the first class not having boards of health or bodies acting as such, by the health officer for the State Department of Health.

Sec. 12, Act of July 17, 1919, P. L. 1010.

2079. Upon the removal to a hospital or other place, or upon the discharge by the recovery or death, of any person or persons who has or have suffered from tuberculosis or any of the diseases comprehended by section two of this act, all premises which have been occupied by the said person or persons while suffering from any of the said diseases shall be disinfected or destroyed, at such time and in such manner as may be authorized and required by the health authorities.

Sec. 13, Act of July 17, 1919, P. L. 1010.

2080. No person suffering from any of the diseases comprehended by section two of this act, nor anyone who has charge of the persons so suffering, shall enter any hired vehicle or other public conveyance, or permit anyone in his or her charge who is suffering therefrom to enter such vehicle, without previously securing the consent of health

authorities and notifying the owner or driver thereof that he or she or the person in his or her charge is so suffering; and the owner or driver of such vehicle shall immediately provide for the disinfection of such conveyance, under the direction of the health authorities, after it has, with the knowledge of such owner or driver, conveyed any such sufferer.

Sec. 14, Act of July 17, 1919, P. L. 1010.

2081. No person suffering from anthrax, bubonic plague, cerebrospinal meningitis (epidemic), (cerebrospinal fever, spotted fever), chicken-pox, Asiatic cholera, diphtheria, (diphtheritic croup, membranous croup, putrid sore throat), measles, German measles, glanders (farcy), mumps, scarlet fever (scarlatina, scarlet rash), small-pox (variola, varioloid), typhus fever, typhoid fever, yellow fever, whooping-cough, or any disease declared communicable and quarantinable by regulation as hereinbefore provided, shall willfully expose himself or herself in any street or public place or public conveyance, nor shall any person in charge of anyone so suffering thus expose the sufferer.

Sec. 15, Act of July 17, 1919, P. L. 1010.

2082. No person, without previous disinfection, shall give, lend, sell, transmit, or expose any bedding, clothing, rags, or other articles, which have been exposed to infection from any of the diseases comprehended by section one of this act: Provided, That such restriction shall not apply to the transmission of articles with proper precaution for the purpose of having the same disinfected.

Sec. 16, Act of July 17, 1919, P. L. 1010.

2083. No person shall let any room, house, or part of a house, in which there has been a person suffering from tuberculosis or any of the diseases comprehended by section two of this act, without having such room, house, or part of a house, and all articles therein, previously disinfected to the satisfaction of the health authorities. The keeping of a hotel, boarding-house, or apartment-house shall be deemed as letting a part of a house to any person who shall be admitted as a guest into such hotel, boarding-house, or apartment-house.

Sec. 17, Act of July 17, 1919, P. L. 1010.

2084. The health authorities of the several townships, boroughs, and cities of this Commonwealth may, and they are hereby authorized and empowered to, establish additional rules and regulations regarding the isolation and quarantine of persons who may be suffering from any of the diseases comprehended by section one of this act, and for the destruction, disinfection, and fumigation of bedding.

clothing, or other infected articles, and for the disinfection and fumigation of houses and premises, and for the carrying out of the provisions of this act, as they may in good faith declare the public safety and health demand; which rules and regulations they may, from time to time, alter or amend, but in no instance shall such rules abridge in any way the provisions of this act or the regulations of the State Department of Health.

Sec. 18, Act of July 17, 1919, P. L. 1010.

Under the Act of June 18, 1895, P. L. 203, it was decided that a family quarantined by a board of health on account of disease, and for that reason without the means of obtaining a livelihood, must be supported by the board of Health and not by the poor district: *Beaver County Commissioners, 14 D. R. 491.*

2085. In the preparation for burial of the body of any person who has died of Asiatic cholera, glanders (farcy), bubonic plague, smallpox (variola, varioloid), yellow fever, typhus fever, scarlet fever (scarlatina, scarlet rash), relapsing fever, cerebrospinal meningitis (epidemic), (cerebrospinal fever, spotted fever), diphtheria (diphtheritic croup, membranous croup, putrid sore throat), tetanus or leprosy, it shall be the duty of the undertaker or person acting as such to thoroughly disinfect and place such body within the coffin or casket in which it is to be buried, within six hours after being first called upon to take charge of the same, provided said call is made between the hours of five ante meridian and eleven post meridian; otherwise such body shall be placed in such coffin or casket within twelve hours; the coffin or casket then to be closed tightly, and not again opened unless permission be granted by the health authorities for special and satisfactory cause shown.

Sec. 19, Act of July 17, 1919, P. L. 1010.

2086. The body of a person who has died of any of the diseases mentioned in section nineteen of this act shall not remain unburied for a longer period of time than thirty-six hours after death, unless special permission be granted by the health authorities extending the time during which said body shall remain unburied for special and satisfactory cause shown. The undertaker or person acting as such shall be responsible for any violation of the provisions of this section.

Sec. 20, Act of July 17, 1919, P. L. 1010.

2087. All services held in connection with the funeral of the body of a person who has died of any of the diseases mentioned in section nineteen of this act shall be private, and the attendance thereat shall include only the immediate adult relatives of the deceased who may

not at the time be under absolute quarantine restrictions and the necessary number of adult pall-bearers, and any advertisement of such funeral shall state the cause of death.

Sec. 21, Act of July 17, 1919, P. L. 1010.

2088. The body of a person who has died of any of the diseases mentioned in section nineteen of this act shall, in no instance, be taken into any church, chapel, public hall, or public building, for the holding of funeral services. The undertaker or person acting as such and the sexton, janitor, or other person having control of such church, chapel, public hall, or public building, shall be responsible for any violation of the provisions of this section.

Sec. 22, Act of July 17, 1919, P. L. 1010.

2089. No undertaker or person acting as such at the funeral or burial of the body of a person who has died of any of the diseases mentioned in section nineteen of this act, shall furnish or provide for such funeral or burial more than the necessary number of conveyances for such adult relatives as are mentioned in section twenty-two of this act and pall-bearers; and all such conveyances shall be fumigated and disinfected, at such time and in such manner as may be directed and required by the health authorities.

Sec. 23, Act of July 17, 1919, P. L. 1010.

2090. The body of a person who has died of any of the diseases mentioned in section nineteen of this act shall not be conveyed from any dwelling or other building or place to any cemetery or other point or place, except in a hearse or other vehicle used for the purpose of conveying corpses only, or in such vehicles as shall be satisfactory to the health authorities, and under such regulations as they may in any case adopt. The undertaker or person acting as such having charge of the funeral or transportation of such body shall be responsible for any violation of the provisions of this section.

Sec. 24, Act of July 17, 1919, P. L. 1010.

2091. The health authorities of the several cities, boroughs, and townships of the first class shall, at the end of each week and for the fraction of each week occurring at the end of each month, report to the State Department of Health, upon blanks supplied for that purpose, a list of all cases of communicable diseases comprehended by section one of this act which have been reported to them during said period; which report shall contain the name of each person suffering therefrom, respectively, and his or her age, sex, color, and nativity, together with the name of the disease, and the date of the onset thereof; and, in the event of no reports of any of said diseases having been received by the aforesaid health authorities, respectively,

during any said period, that fact shall be reported to the State Department of Health.

Sec. 25, Act of July 17, 1919, P. L. 1010.

2092. Any person who shall remove, deface, cover up, or destroy, or cause to be removed, defaced, covered up, or destroyed, any placard relating to any of the diseases comprehended by section two of this act, shall for every such offense, upon conviction thereof in a summary proceeding before any magistrate or justice of the peace of the county wherein such offense was committed, be sentenced to pay a fine of not less than ten (\$10) dollars or more than one hundred (\$100) dollars, to be paid to the use of said county, and costs of prosecution, or to be imprisoned in the county jail for a period of not less than ten days or more than thirty days, or both, at the discretion of the court. Any person, other than the attending physician or trained nurse, who shall enter or leave any quarantined premises without having secured permission from the health authorities; or who shall violate any of the quarantine restrictions imposed by this act or by the rules and regulations of the health authorities of any city, borough, or township of the first class or the rules and regulations of the State Department of Health; or who shall interfere with a health officer or any other duly qualified agent of the State Department of Health or any local board or department of health in the discharge of his official duties in the placarding, quarantining, disinfecting, or releasing from quarantine of any premises or in the investigation of any alleged case of quarantinable disease,—shall for every such offense, upon conviction thereof in a summary proceeding before any magistrate or justice of the peace of the county wherein said offense was committed, be sentenced to pay a fine of not less than fifty (\$50) dollars or more than one hundred (\$100) dollars, to be paid to the use of the said county, and costs of prosecution or to be imprisoned in the county jail for a period of not less than ten or more than thirty days, or both, at the discretion of the court.

Any physician, undertaker, teacher of a public school, principal of a school, superintendent of a Sunday school, sexton, janitor, parent or guardian, or any other person or persons who shall fail, neglect, or refuse to comply with, or who shall violate, any of the provisions of this act,—shall for every such offense, upon conviction thereof in a summary proceeding before any magistrate or justice of the peace of the county wherein said offense was committed, be sentenced to pay a fine of not less than twenty (\$20) dollars or more than one hundred (\$100) dollars, to be paid to the use of said county, and costs of prosecution, or to be imprisoned in the county jail for a period of not less than ten or more than thirty days, or both, at the discretion of the court.

Sec. 26, Act of July 17, 1919, P. L. 1010.

(c) MAINTENANCE OF QUARANTINED PERSONS.

2093. If any person shall come out of any city, borough, township, or district, in this Commonwealth, into any other city, borough, township, or district, and shall happen to fall sick of any contagious or infectious disease before he shall have gained a settlement therein, the bureau of health, board of health, or board of school directors of such city, borough, or township, or district, shall, as soon as conveniently may be, give notice to the bureau of health, board of health, or board of school directors of the city, borough, township, or district, as the case may be, where such sick person had last gained a settlement, or to one of them, the name, circumstance, and condition of such sick person; and if the bureau of health, board of health, or board of school directors, to whom such notice shall be given, shall neglect or refuse to repay the moneys necessarily expended for the use of such sick person and to take charge of relieving and maintaining him, or shall, on request made, refuse or neglect to pay the money expended in maintaining such sick person, in every such case it shall be the duty of the court of quarter sessions of the county where such sick person was last settled, upon complaint to them made, to compel the payment by such bureau of health or board of school directors or board of health of all such sums of money as were necessarily expended for such purposes, in the manner directed by law in the case of a judgment obtained against overseers of poor: Provided, That in all cases the court of quarter sessions of the proper county shall have the right and authority to supervise, correct, and amend, or allow, the charges or expenses received, or any items thereof.

Sec. 1, Act of May 1, 1909, P. L. 307.

2094. All persons falling sick of any contagious or infectious disease, excepting those entitled to relief under the existing poor-laws, shall bear and pay all expenses incident to such sickness, except expense of quarantine; and in case any bureau of health, board of health, or board of school directors have made payment, under section one of this act, then they shall recover any money so expended, in the same manner as debts of like amount are now by law collected: Provided, The expense of the care and maintenance of the poor person, sick with a contagious or infectious disease, shall be paid out of the funds at the disposal of said bureaus of health, board of health, or board of school directors.

Sec. 2, Act of May 1, 1909, P. L. 307.

2095. A settlement may be gained in any district as follows:—

1. By any person who shall come to inhabit in the same, and who

shall, for himself and on his own account, execute any public office legally placed therein during one whole year.

2. By any person who shall be charged with and pay the proportion of any public taxes or levies for one year.

3. By any person who shall bona fide take a lease of any real estate of the yearly value of ten dollars, and shall dwell upon the same for one whole year, and pay the said rent.

4. By any person who shall become seized of any freehold estate within such district, and who shall dwell upon the same for one whole year.

5. By any unmarried person, not having a child, who shall be lawfully bound or hired as a servant within such district, and shall continue in such service during one whole year.

Sec. 3. Act of May 1, 1909, P. L. 307.

2096. Every married woman shall be deemed, during coverture and after her husband's death, to be settled in the place where he was last settled, but, if he shall have no known settlement, then she shall be deemed, whether he be living or dead, to be settled in the place where she was last settled before her marriage.

Sec. 4. Act of May 1, 1909, P. L. 307.

A husband whose wife is in a state insane asylum as a charge upon the township in which he resides, may acquire a new settlement by removal to another township, and, after such new settlement has been acquired, the wife will become a charge upon the township to which the husband has removed: *Chatham Twp. Overseers v. Corington Twp. Overseers*, 3 J. Super. Ct. 25.

2097. Every illegitimate minor child shall be deemed to be settled in the place where the mother was legally settled at the time of the birth of such child.

Sec. 5. Act of May 1, 1909, P. L. 307.

(d) BONE BOILING ESTABLISHMENTS, DEPOSITORYES OF DEAD ANIMALS.

2098. From and after the passage of this act, bone boiling establishments and depositories of dead animals may be established and operated in this Commonwealth under the following conditions, to wit: That no establishments for bone boiling or depository of dead animals shall continue to be operated or shall be erected and operated within any city or borough within this Commonwealth, unless the permission of the board of health of said city or borough shall have been obtained, and the said establishment shall be conducted in accordance with the regulations prescribed by the said board of health; and further, in case a bone boiling establishment or depository of

dead animals exists, or is erected and conducted in a township in any county of this Commonwealth, the same shall be conducted under the supervision and subject to the regulations prescribed by the State Board of Health. And every person offending against the provisions of this act, shall for every such offense, and each month's continuance of the same after notice, forfeit and pay to the board of health if in a city or borough, or to the school board of the district or township if in a township, the sum of fifty dollars, to be recovered as debts of that amount are recoverable, and also be liable to indictment at common law for creating and maintaining a nuisance.

Sec. 1, Act of May 19, 1897, P. L. 77.

A bone boiling plant in a thinly populated district on the outskirts of a city where similar industries have long been established operating under a license of the board of health, is not a nuisance although it may cause inconvenience to persons residing in the neighborhood: *Shetzline et al. v. Laper*, 19 D. R. 1025.

(e) RUBBISH AND WASTE MATERIALS.

2099. From and after the passage of this act, it shall be unlawful, and is hereby forbidden, for any person or persons to throw waste paper, sweepings, ashes, household waste, nails or rubbish of any kind into any street, in any city, borough, or township in this Commonwealth, or to interfere with, scatter or disturb the contents of any receptacle or receptacles containing ashes, garbage, household waste, or rubbish, which shall be placed upon any of said paved streets or sidewalks for the collection of the contents thereof. Any person or persons who shall violate any of the provisions of this act shall, upon conviction thereof before any magistrate, be sentenced to pay the cost of prosecution, and to forfeit and pay a fine not exceeding ten (\$10) dollars, for each and every such offense, and in default of the payment thereof, shall be committed, and imprisoned in the county jail of the proper county for a period not exceeding ten days.

Sec. 1, Act of April 20, 1905, P. L. 227.

(f) Spitting in Public Places.

2100. From and after the passage of this act, it shall be unlawful for any person to spit on any public walk, public wharf or landing, or on the floor, platform, stairway, or elevator, or covering used thereon, of any railroad or railway station, or other building to which the public has access; or on the floor or platform or steps, or any covering used thereon, of any railroad or railway car, or other vehicle, conveyance, or common carrier used for the transportation of the public.

Sec. 1, Act of May 11, 1909, P. L. 516.

2101. It shall be the duty of owners of all such buildings, cars, or other vehicles, conveyances, or common carriers, used for transportation of the public in this Commonwealth, or the officers in control thereof, to post and keep posted, in prominent places, conspicuously lettered signs warning the public against violating the provisions of this act, and calling attention to the penalty for such violation. Where spitting receptacles are provided for the convenience of the public, in buildings, and cars and other vehicles, that are open and in use daily by the public, such receptacles shall be cleansed and disinfected daily; and in buildings, cars, and other vehicles, that are not open or used daily, the said receptacles shall be cleansed and disinfected immediately after each day that such buildings, cars, and other vehicles are used by the public.

Sec. 2, Act of May 11, 1909, P. L. 516.

2102. Any person violating the provisions of section one of this act, shall, upon conviction thereof in a summary proceeding before a justice of the peace, alderman, or magistrate of the county wherein such offense is committed be sentenced to pay a fine of one dollar and costs; such fine to be paid into the treasury of the municipality in which the violation is committed; or, if committed upon a train or car, into the treasury of the municipality or township in which the offender is tried and convicted. In default of payment of such fine and costs, the offender shall be sentenced to be confined in the proper county jail for a period of not less than one day, nor more than five days.

Sec. 3, Act of May 11, 1909, P. L. 516.

2103. Any person or persons, firm or corporation, violating the provisions of section two of this act, shall, upon conviction thereof in a summary proceeding before a justice of the peace, alderman, or magistrate of the county wherein such offense is committed, be subject to a fine of not less than five dollars, nor more than fifty dollars.

Sec. 4, Act of May 11, 1909, P. L. 516.

2104. Any constable, or other person authorized by law to make arrests, is hereby empowered to arrest persons violating the provisions of section one of this act on trains or cars in motion or in transit, and to take such offenders before the nearest justice of the peace, alderman, or magistrate, either at the place where the offense is committed or at the next regular stopping place of the train or car; and such justices of the peace, aldermen, and magistrates are hereby given jurisdiction in such cases.

Sec. 5, Act of May 11, 1909, P. L. 516.

CHAPTER XLVI.

LICENSES AND LICENSES FEES.

For other provisions relating to this subject see sections 1260 to 1281, inclusive.

2105. Whenever, hereafter, any dispute shall arise between any township, city, borough, or other municipal corporation of this State, having authority under the law to charge a license fee against any telegraph, telephone, light, power, street passenger railway, motor traction, gas or water company, occupying the highways of such municipality with its poles, wires, conduits, or cables, as to whether or not the amount of license fee, named in any ordinance of said municipal corporation, for the inspection and regulation of the said poles, wires, conduits, or cables, under its police power, is or is not reasonable, either party may apply, by petition, to the court of Common pleas of the county where said municipal corporation is situated, to determine the said dispute. Upon the filing of said petition, setting forth the nature and character of the dispute, and the facts bearing upon the question thus raised, the said court shall issue a citation to the respondent, commanding it to appear and answer the said petition at a time named, and to abide by and obey the order of the court. Said citation and a copy of said petition shall be served upon the respondent, not less than fifteen days before the time fixed for answering. To said petition the respondent shall make answer within the time fixed, or such extension thereof as the court shall allow, specifically answering the facts set forth in said petition, and averring such other or further facts as it shall deem necessary for the proper determination of the said dispute. At any time after the return day fixed in the said citation, the said court shall, upon application of either party, fix a date for the hearing of the issue raised by said petition and answer; and thereupon shall take the evidence and decide the said dispute in the way and manner provided by law for the hearing of cases in equity.

Sec. 1, Act of April 17, 1905, P. L. 183, as amended by Sec. 1, Act of July 26, 1913, P. L. 1371.

A municipal tax on telegraph, telephone and other poles cannot be imposed for revenue purposes, but only in the exercise of police power to reimburse the municipality for the reasonable cost of inspection and there can be no recovery of such tax for a period in the past during which there was no inspection by the municipality. *Marietta Borough v. The Columbia Telephone Company* (No. 3), 37 *Lanc. L. R.* 255.

The fact that the electric street railway companies are not included within the provisions of this act does not make it unconstitutional as special legisla-

tion; such companies are by the constitution itself placed in a separate class: *West Chester v. Postal Telegraph-Cable Co.*, 227 Pa. 384, affirming 38 Super. Ct. 603, affirming 18 D. R. 101.

This act does not violate the provisions of the constitution relating to the title of statutes; nor is it in conflict with the constitutional guarantee of the right of trial by jury; nor does it delegate legislative power to the courts: *Pittsburgh & Allegheny Telephone Co. v. Braddock Borough*, 43 Super. Ct. 456, affirming 56 P. L. J. 372.

Where there is an agreement between the borough and a telephone company fixing the amount of the license tax the reasonableness of the license fee is not a question for determination by the court: *Cochranon Borough v. Cochranon Telephone Company*, 41 Super. Ct. 146.

A public service corporation is not bound by the provisions of an invalid ordinance which fixes the license fees, even though the ordinance has been formally accepted by the company: *Norwood Borough v. Keystone Tel. Co.* 64 Super. Ct. 261, affirming 13 Del. 181; 6 Lehigh 262, 7 M. L. R. 182, 29 York 46.

The procedure under this act applies to license fees imposed under the police powers of the municipality, and not to the license tax authorized by Clause 4, Sec. 3, of Art. 5 of the Act of 1889, P. L. 277: *Postal Telegraph-Cable Co. v. Altoona*, 58 Super. Ct. 24.

Under this act the court of common pleas has no jurisdiction to determine a dispute as to the amount that should be allowed as rent for the use of a county bridge in stringing wires over it by a telephone company: *Petition of Telephone Co.* 63 P. L. J. 401.

In proceedings under this act, the findings of fact of the court have the same conclusive force as the verdict of a jury: *Nanticoke Borough v. Bell Telephone Co.* 47 Super. Ct. 184.

Where a telephone company accepts a grant under an ordinance, providing that the said company "shall be governed by all the legal ordinances of a general nature now in force or that may hereafter be enacted;" it is not bound by an ordinance which fixes an unreasonable fee, and in such a case, upon proper petition under this act it is the duty of the court to hear the evidence and decide the question on its merits: *Johnstown Telephone Co. v. Ferndale Borough*, 47 Super. Ct. 461. See also *Johnstown Telephone Company v. Southport Borough*, 47 Super. Ct. 468, and *Windber Telephone Co. v. Scalp Level Borough*, 47 Super. Ct. 470.

The proceedings upon petition under this act are *de novo* and it is the duty of the court to hear and determine the question at issue, having due regard for the weight of the evidence, and there is no burden upon the petitioner to produce evidence to prove that the ordinance is unreasonable: *A. Y. & P. T. and T. Co. v. Coudersport Boro.*, 49 Super. Ct. 46, rev. 38 Pa. C. C. 33, 29 D. R. 346, 2 M. L. R. 223.

2106. Said court shall have power to allow any pleading to be amended, to make all necessary general or special rules or orders for the production of evidence and to expedite the said hearing, and may hear and determine the matter *ex parte* if the respondent fails to answer or appear at the time fixed for the hearing.

Sec. 2, Act of April 17, 1905, P. L. 183.

2107. The said court, in its decision of said dispute, shall determine the amount of annual license fees which should be paid to the

said municipal corporation in order to properly compensate it for the necessary cost of the services performed, or to be performed, by it, for the inspection and regulation of the poles, wires, conduits, cables, pipe or mains of the said telegraph, telephone, light, power, street passenger railway, motor traction, gas, or water company; and the amount thus determined shall be the maximum sum which the said municipal corporation shall be authorized to charge as license fees against such petitioning corporation.

Sec. 3, Act of April 17, 1905, P. L. 183, as amended by Act of July 26, 1913, P. L. 1371, and Sec. 2, Act of June 23, 1917, P. L. 643.

A municipal tax on telegraph poles cannot be imposed for revenue purposes, but only to reimburse the municipality for reasonable costs of inspection and notifying the company of defects: *Postal Telegraph Co. v. City of Lancaster*, 18 D. R. 874.

The frequency and character of the inspections, and whether or not they are reasonable, are matters within the discretion of the municipal authorities in the first instance, and their action will be reversed only for a clear abuse of discretion: *Union Telephone Company v. Greenville Borough*, 18 D. R. 932, s. c. 36 Pa. C. C. 197.

The fees are limited to the cost of inspection and regulation of the poles and wires by the city's employees. *Consolidated Tel. Companies of Penna. v. Easton*, 16 D. R. 887, s. c. 11 North C. R. 1, 10 Del. Co. 333.

Where a municipal ordinance, subject to which a telephone company is authorized to occupy streets and highways, imposes an annual license tax of fifty cents per pole, the company is not concluded by such ordinance, but may petition the court under this act to determine the proper amount to be paid, and if such application is made pending suit to recover tax, proceedings will be stayed until hearing has been had on petition. Such tax cannot be imposed for revenue purposes, but only to reimburse borough for costs of inspection and regulation. *Marietta Borough v. Telephone Co.*, 36 Lanc. L. R. 269, 271, s. c. 11 M. L. R. 106; 29 D. R. 32; 37 Lanc. L. R. 255.

It is not necessary for a municipality to maintain a separate and distinct organization for the purpose of inspecting and regulating the lines of a public service corporation in order to empower it to charge a license fee for those purposes: *Monessen Boro. v. Cent. D. & P. T. Co.* 51 Super. Ct. 452, affirming 21 D. R. 904, 1 West 240.

A provision in an ordinance requiring an inspection of poles, and wires of a telephone company three times weekly in a borough as the basis on which to fix a license fee is such an abuse of discretion as to call for the intervention of the courts: *Myersdale Boro v. Somerset Tel. Co.* 68 Super. Ct. 385.

The cost of inspection and supervision is the standard by which the amount of license fee is determined: *Bell Tel. Co. v. Hazleton*, 67 Super. Ct. 264, *Dormont Boro. v. West Liberty Street Railway Co.* 64 Super. Ct. 562; *Petition of Penna. Gas Co.*, 258 Pa. 234, *Port Clinton v. Postal Tel. Cable Co.* 4 Sch. 178 *Petition of Postal Tel. Cable Co.*, 57 P. L. J. 49.

A borough license tax against a telegraph company doing an interstate business must be limited to an amount necessary to reimburse the borough for inspection and regulation of the poles, wires, etc., and such other expenses as may be reasonably anticipated in connection therewith: *Postal Tel. Cable Co. v. Hollidaysburg Borough*, 17 D. R. 298.

Under the Act of Congress, of July 24, 1866, and March 1, 1884, a foreign telegraph company may occupy public streets and highways with its poles without first obtaining a license from the municipality: *Puassutaoney Borough v. Western Union Telegraph Company*, 18 D. R. 308.

2108. Either party shall have the right of appeal from the order of the court, to the Supreme or Superior Court, as in other cases.

Sec. 4, Act of April 17, 1905, P. L. 183.

2109. The amount of such annual license fees, as determined by the final order of the court, shall continue until altered by the court itself; but no application shall be made for that purpose oftener than once in every two years.

Sec. 5, Act of April 17, 1905, P. L. 183.

The tax imposed under this act should be uniform upon the same class of objects and corporations, unless reasons for a distinction are shown: *Gettysburg v. United Telephone Co.*, 19 D. R. 875.

If there be no inspection or supervision by the municipality there can be no license fee imposed: *Del. & Atl. Telegraph and Telephone Company's Petition*, 224 Pa. 55, affirming 37 Super. Ct. 151, affirming 10 Del. 340. See also *United Telephone and Telegraph Company's Petition*, 31 Pa. C. C. 481; s. c. 4 Just. L. R. 280; 10 Del. 29, 7 Lack J. 85, 15 D. R. 193.

2110. Nothing in this act contained shall be so construed as to alter or affect the duty of said telegraph, telephone, light, power, street passenger railway, motor traction, gas, or water company to properly erect, or construct and maintain, its poles, wires, conduits, cables, pipes or mains, or to relieve it from liability for negligence in regard thereto, either primarily to the person injured or secondarily to the municipal corporation, if judgment is recovered against it by the person injured by reason of such negligence.

Sec. 6, Act of April 17, 1905, P. L. 183, as amended by Act of July 26, 1913, P. L. 1371, and Sec. 3, Act of June 23, 1917, P. L. 643.

2111. No city, borough, incorporated town, township, or county shall require or collect any registration, or license fee, or tax for any motor vehicle or license from any operator thereof, except as to motor vehicles transporting passengers for pay or hire within the limits of any city, or from points within such city to points outside of the city limits.

Part of Sec. 9, Act of June 30, 1919, P. L. 678, as amended by Sec. 5, Act of May 16, 1921, P. L. 582.

2112. No city, county, borough, incorporated town, or township, shall adopt, enforce, or maintain any ordinance, rule, or regulation contrary to or inconsistent with the terms of this act; or require of any person any license tax upon or registration fee for any traction-engine, tractor, or trailer, or any permit or license to operate. Oper-

ators of traction-engines or tractors shall have the same rights upon the public streets and highways as the drivers of any other vehicles, and no public road open to horse-drawn vehicles shall be closed to traction-engines or tractors.

Sec. 15, Act of June 8, 1915, P. L. 926.

CHAPTER XLVII.

CEMETERIES AND BURIAL GROUNDS.

(a) Changing Location of Cemeteries. Removal of Bodies.

2113. Whenever any incorporated or unincorporated church, cemetery, or burial association own burial grounds, wholly or in part in any city, township, or borough in this Commonwealth, and by reason of the growth thereof, as well as for sanitary purposes, it is deemed necessary or desirable, in the opinion of the said church, cemetery, or burial association, to change the location thereof: or if, by reason of the opening of streets, roads, or public passages around or through the same, a portion of the property has become angular and partly surrounded by improvements; or if, by reason of the proximity of adjacent property, the interment of the dead may, in the interest of public health, be prohibited in any part or parts of the ground belonging to any incorporated or unincorporated church, cemetery, or burial association aforesaid; or, from other causes, any burial-ground, belonging to or in charge of any incorporated or unincorporated church, cemetery, or burial association, has ceased to be used for interments, and has become so neglected as to become a public nuisance: or that the remains of bodies interred in any such neglected or disused cemetery, in any city, township, or borough, interfere with and hinder the improvements, extensions, and general progressive interest of any city, township, or borough,—it shall be lawful for such incorporated or unincorporated church, cemetery, or burial association, and they are hereby authorized and empowered, to purchase new and more suitable grounds in the vicinity of such city, township, or borough, of such extent and area as they shall deem expedient: or to purchase lots or sections in other properly regulated burial-ground or cemetery in the vicinity of such city, township, or borough, for the burial of the dead: and to purchase from the holders of lots in their own grounds the said lots, whether interments have been made in them or not, and provide for the reinterment of bodies that may be buried in any of the lots so purchased by them. And the board of managers, trustees, or other officials in whom is vested the management of the affairs of such incorporated or unincorporated church,

cemetery, or burial association, are also hereby authorized and empowered to contract and agree with the owners of the lots in which interments have been made to remove from said lots the dead, to such new locations, upon such terms as may or can be mutually agreed upon. And in case any bodies have been interred in lots in such cemetery or cemeteries, and the owners of the lots in which the interments are made cannot, after diligent search by the board of managers, trustees, or other officials, be found, such bodies may be removed by the aforesaid managing officials to lots in such grounds, so purchased by said incorporated or unincorporated church, cemetery, or burial association, or to lots or sections in other properly regulate burial-ground or cemetery in the vicinity of such city, township, or borough, and interred therein; the expense of such removal and interment, enclosures and improvements to be borne by such incorporated or unincorporated church, cemetery, or burial association; and, upon such removal being made, the ground from which the bodies are so removed shall be deemed and considered vacated for burial purposes, and revert to and become the property of such incorporated or unincorporated church, cemetery, or burial association making such removal, and be taken and considered the same as if said lot or lots had never been sold by the said church, cemetery, or burial association, for the purpose of interment or any other purpose whatsoever. And in case the holders of lots in which no interments have been made cannot, after diligent search by the managing officials above mentioned, be found, then the managing officials may, in their discretion, assign to said owner parts of the ground so purchased, equal in value to the said lots the owners of which cannot be found; or assign to such owners lots of equal value in other properly regulated burial-ground or cemetery in the vicinity of such city, township, or borough; or the said managing officials may set apart or hold in trust, for the owners of said lots who cannot be found, a sum of not less than the original price paid for said lots by the owner, and shall hold and securely keep the said sum, so set apart, for the benefit of the said owners, and pay to them whenever they may call for the same: and thereupon, whenever lots of equal value shall have been set apart, on the books of said incorporated or unincorporated church, cemetery, or burial association, as having been assigned to said owners who cannot be found, in the new and more suitable ground so purchased, or in a properly regulated burial-ground or cemetery in the vicinity of such city, township, or borough: or as soon as the said managing officials shall set apart a sum equal to the price paid for said lots, the owners of which cannot be found, for the benefit of said owners,—then, and in that case, the lots heretofore held by said owners shall revert to and become the property of said

incorporated or unincorporated church, cemetery, or burial association, in whose ground the same are located, as if the same had never been sold for the purpose of interment or any other purpose whatsoever; and such incorporated or unincorporated church, cemetery, or burial association is hereby further authorized and empowered to sell and convey in fee simple, and unrestricted as to use, all such portions of their land not used or conveyed by them for burial purposes, or which shall have been reconveyed to them, or which have reverted to or become acquired by them as hereinbefore authorized, and from which all bodies shall have been removed; and to make, grant, and deliver in the customary form a deed or deeds for the same to the purchaser or purchasers, free, clear, and discharged of any use, trust, or limitation whatsoever.

Sec. 1, Act of June 25, 1913, P. L. 551.

2114. Whenever any incorporated or unincorporated church, cemetery, or burial association owns ground, wholly or in part in any city, township, or borough in this Commonwealth, and by reason of the growth thereof, as well as for sanitary purposes, it is deemed necessary or desirable, in the opinion of the said church, cemetery, or burial association, to change the location thereof; or if, by reason of the opening of streets, roads, or public passages around or through the same, a portion of the property has become angular and partly surrounded by improvements; and, by reason of the proximity of adjacent property, the interment of the dead may, in the interest of public health, be prohibited in the ground belonging to any such church, cemetery, or burial association aforesaid; or, from other causes, any burial-ground, belonging to or in charge of any such incorporated or unincorporated church, cemetery, or burial association, has ceased to be used for interments, and has become so neglected as to become a public nuisance; or that the remains of bodies interred in any such neglected or disused cemetery, in any city, township, or borough, interfere with and hinder the improvements, extension, and general progressive interest of any city, township, or borough,—then, and in such case, the courts of quarter sessions of the several counties of this Commonwealth, upon petition of the managers, trustees, or other officials, in whom is vested the management of the affairs of such incorporated or unincorporated church, cemetery, or burial association, setting forth that, by reason of the growth of said city, township, or borough, it has been necessary to change the location thereof; or that, by reason of the proximity of adjacent property, the interment of the dead in said cemetery or burial-ground, in the interest of public health, has been prohibited; or, from other causes, said burial-ground has ceased to be used for interments, and has become so neglected as to become a public nuisance; or that the remains of bodies therein interfere with and hinder the improvements,

extensions, and general progressive interests of any such city, township, or borough, and the public good; and after three weeks' advertisement of hearing in open court, for the purpose, the said court is hereby vested and empowered with full power and authority, after a full hearing of the parties therein, proofs and allegations, to authorize and direct the removal of the remains of all the dead from such cemetery or burial-ground to such other suitable ground as said managers, trustees, or officers may have procured, in the vicinity of such city, township, or borough, for the reinterment of the bodies, or to such lots or sections in a properly regulated burial-ground or cemetery in the vicinity of such city, borough or township, and to order and decree that the ground of such cemetery be forever vacated for burial purposes.

Sec. 2, Act of June 25, 1913, P. L. 551.

2115. After the removal of the bodies, as provided for in section two, the said court of quarter sessions may, upon petition of the said managers, trustees, or other officers referred to in said section, and upon being satisfied that the order of the court has been duly complied with, authorize and empower the said managers, trustees, or other officers, in whom is vested the management of such incorporated or unincorporated church, cemetery, or burial association, to sell said burial ground at public or private sale, either as a whole or divided into lots, as they may deem most advisable and most likely to realize the most money, and to make, execute, and deliver to the purchaser or purchasers a deed or deeds therefor, which deed or deeds shall vest in said purchaser or purchasers a perfect and indefeasible fee simple title, free and clear from all claims or interest of said incorporated or unincorporated church, cemetery, or burial association, and of all owner or owners of lot or lots in said burial-ground, the proceeds thereof being substituted in all respects for said ground.

Sec. 3, Act of June 25, 1913, P. L. 551.

2116. The proceeds of such sale or sales shall be applied and distributed by said managers, trustees or other officers, in whom is vested the management of such incorporated or unincorporated church, cemetery, or burial association, as follows: (1) to the payment of the expenses of removing said bodies and the monuments or tombstones erected or maintained in such cemetery, including the purchase of new grounds or new lots in a properly regulated burial-ground or cemetery, in the vicinity of such city, township, or borough; (2) to the compensation or payment to lot owners in said burial-ground, in which no bodies have been interred; and (3) the residue, after defraying all necessary expenses incident to the removal of said bodies and interring the same in a careful manner, to be held in trust for lot owners who cannot be found after diligent search, and for such

other uses, objects, and purposes as said incorporated or unincorporated church, cemetery, or burial association may order, direct, and appoint.

Sec. 4, Act of June 25, 1913, P. L. 551.

(b) Care of Neglected Cemeteries by Township Supervisors.

2117. Whenever any burial-ground is being neglected so as to become a nuisance, even though said burial-ground may occasionally be used for burial purposes, the court of quarter sessions of the county in which such burial-ground is situated may direct that such burial-ground be placed in care of the township supervisor of the township, under the direction and supervision of said court.

Sec. 1, Act of May 24, 1917, P. L. 292.

2118. That upon the petition of twenty-five or more citizens residing within a radius of five miles of any such burial-ground, to the court of quarter sessions, the said court may order and direct the township supervisors of the township to cut down, in the month of August of each year, all brush, grass, briars, and weeds growing in such burial-ground, and to remove the same, and place such grounds in good order and condition.

The cost thereof shall be paid out of the township treasury, but in no case shall the supervisors of any township expend more than fifteen dollars on any one cemetery, in any one year, for such purposes.

Sec. 2, Act of May 24, 1917, P. L. 292.

2119. Such burial-grounds shall remain open to the public, according to such regulations as may be made by the said court.

Sec. 3, Act of May 24, 1917, P. L. 292.

(c) Care of Neglected Cemeteries by Overseers of Poor.

2120. The overseers of the poor of any township of the second class in this Commonwealth, which constitutes a separate poor-district, are hereby authorized and empowered, on the petition of ten per centum of the taxable inhabitants within such township, to fence, to keep in repair, and to clear of all weeds, briars, and all other growth not used for ornamental purposes, any abandoned and neglected cemetery or burial-ground, which cemetery or burial-ground, shall have been abandoned and neglected for a period of five years prior to the filing of said petition, and that is open for interment to the general public without charge or fee, and when such cemetery or burial-ground is not maintained for profit or gain.

Sec. 1, Act of June 21, 1911, P. L. 1111.

2121. The overseers, as aforesaid, shall have power, and they are hereby authorized, at the expense of the respective poor-districts of said townships, to purchase wood, timber and all other necessary material for repairing fences, and other repairs, and employ, oversee, and direct the necessary labor and work to carry out the provisions of this act.

Sec. 2, Act of June 21, 1911, P. L. 1111.

2122. The expense of such maintenance shall be paid from the general poor-fund of the poor-districts of said townships; and all funds so expended shall be accounted for before the township auditors, as provided for by law relating to poor-districts, and shall be subject to all laws relating thereto: Provided, That this act shall not apply to any cemetery or burial-ground controlled or under the supervision of any denominational church or sectarian religious society.

Sec. 3, Act of June 21, 1911, P. L. 1111.

CHAPTER XLVIII.

ACTIONS BY AND AGAINST TOWNSHIPS.

For other provisions relating to this subject, see sections 1395 to 1401, inclusive.

(a) Affidavits of Defense.

2123. Counties, cities, boroughs, townships, school districts, and other municipalities shall not be required to file an affidavit of defense.

Part of Sec. 12, Act of May 14, 1915, P. L. 483, as amended by Sec. 1, Act of March 10, 1921, P. L. 16.

The Act of April 26, 1893, P. L. 26, exempting municipal corporations from filing affidavits of defense in actions of assumpsit was repealed by the general Practice Act of 1915, P. L. 483, by necessary implication, but by the Act of May 3, 1917, P. L. 149, amending the twelfth section of the Act of 1915, municipalities are again exempted from the obligation to file an affidavit of defense: *Walsh v. Borough of Throop*, 18 Lack. J. 130; *Bittner, et ux, v. City of York*, 30 D. R. 956.

The above section relieves municipalities of the necessity of filing affidavits of defense: *Bittner v. City of York*, 34 York 173.

The above act, exempting municipal corporations from the necessity of filing affidavits of defense, did not repeal as to such corporations section 3 of the Act of 1915, abolishing all pleas and impose upon them the obligation to file a plea. Its intention was to relieve them from filing anything by way of defense: *Deems v. Borough of Washington*, 12 M. L. R. 195.

(b) Filing of Judgments Obtained Before Justices and Aldermen.

2124. Hereafter it shall be the duty of the plaintiff or plaintiffs in every judgment rendered by a justice of the peace or alderman of this Commonwealth, against any borough, township or school district of this Commonwealth, to file, within one week from the time of rendition of said judgment, with the prothonotary of the county in which such municipal corporation is situated, a certificate signed by the plaintiff or plaintiffs, naming the parties to the action in which said judgment was rendered, the magistrate by whom rendered and setting forth the fact and date of the rendition of the same and the amount thereof.

Sec. 1, Act of April 22, 1905, P. L. 296.

See notes to Sec. 4 of this act, Sec. 2127.

2125. Immediately upon the receipt of such certificate by the prothonotary of such county, he shall enter it of record in a book, kept by him in his office for that purpose, to be called the "Record of Suits before Justices and Aldermen against Boroughs, Townships and School Districts," setting forth therein the name of the plaintiff, the name of the defendant municipality, the sum for which judgment was entered, the date of its rendition, and the name of the justice or alderman by whom the judgment was given.

Sec. 2, Act of April 22, 1905, P. L. 296.

2126. For entering such certificate of record, the prothonotary shall receive the sum of fifty cents, for which in every instance the municipality against which the suit is brought shall be liable to the prothonotary.

Sec. 3, Act of April 22, 1905, P. L. 296.

2127. Whenever in the case of any judgment rendered by any justice of the peace or alderman of this Commonwealth against any borough, township or school district of this Commonwealth, the provisions of this act shall not be complied with, no transcript of such judgment may, at any subsequent time, be filed in the office of the prothonotary, for any purpose whatsoever; and neither the justice's nor alderman's record of such judgment, nor any transcript or copy thereof, may be used as evidence in any proceedings to enforce or collect said judgment.

Sec. 4, Act of April 22, 1905, P. L. 296.

This section clearly offends against Art. 3, Sec. 7 of the Constitution, which forbids the passage of any local or special law providing or changing methods for the collection of debts or the enforcement of judgments: *Fleming vfg. Co. v. Hector Township*, 35 Pa. C. C. 195, s. c. 6 Just. L. R. 283, 18 D.

R. 730. Also McKenna v. Dunmore Borough, 17 D. R. 908, s. c. 8 Lack. J. 382, 2 Leh. 332, 6 Just. L. R. 169, 21 York 103.

This act is designed to make indispensable to the only mode of execution prescribed by the Act of April 15, 1834, P. L. 537, Sections 6 and 7, the filing with the prothonotary of the proper county, of the certificate in a judgment secured against any borough, township, and school district before a justice of the peace or alderman. As a penalty for non-compliance with the act of 1905, a right, which the plaintiff would otherwise have had under the Act of 1834 is in terms taken away: *Wolf v. Salem Township, 35 Pa. C. C. 157, s. c. 17 D. R. 1006.*

(c) Actions on Surety Company Bonds.

2128. It shall be lawful for any borough, city or other municipality of this Commonwealth, to which is given the bond or other obligation of any officer thereof for the performance of his duties, or the bond or other obligation of any contractor therewith for the performance of his contract, in which bond or obligation any corporation or surety company is the surety, to bring any suit, action or other legal proceeding upon said bond or obligation in the county in which the respective borough, city or other municipality is situate, with like effect as if the said corporation or surety company were a resident of the said county.

Sec. 1, Act of May 2, 1901, P. L. 111.

2129. The summons or other process shall be served upon the said corporation or surety company defendant by reading the same in the hearing of any president, vice president, secretary, chief clerk, treasurer, or in the hearing of any other officer of said company, or of any director or agent thereof; or by giving any of the aforesaid officers or agents notice of the contents of said summons or other process, and giving him a true and attested copy thereof. If any of the aforesaid officers or agents cannot conveniently be found, then such service may be made by leaving a true and attested copy of the summons or other process at the dwelling house of such officer or agent, with an adult member of the family; and if said officer or agent resides in the family of another, then said attested copy may be left with an adult member of the family with which such officer or agent resides. Where the corporation or surety company defendant is a foreign corporation, authorized to do business in this State, the summons or other process may be served in the manner provided by law for the service of a summons upon any duly appointed and registered agent of said foreign corporation or company, resident in this State.

Sec. 2, Act of May 2, 1901, P. L. 111.

2130. The said summons or other process, hereinbefore provided for, shall be served by the sheriff or his deputy within the county in

which the writ issues; but when the corporation, surety company, or the officers or agents thereof, are non-residents, the said sheriff shall deputize to serve said summons or other process the sheriff of any other county in which the corporation or surety company defendant is located or the officers thereof reside; or in which the registered State agent is resident, in cases where a foreign corporation or surety company is defendant; but the mileage for service in the latter cases shall be computed only from the county seat in which the said deputized sheriff resides.

Sec. 3, Act of May 2, 1901, P. L. 111.

CHAPTER XLIX.

PENAL PROVISIONS. COMMITMENTS. PRISONS.

(a) Illegal Use of Public Money.

2131. If any officer of this Commonwealth or of any city, borough, county or township thereof, shall loan out, with or without interest, or return therefor, any money or valuable security received by him, or which may be in his possession, or under his control by virtue of his office, he shall be guilty of a misdemeanor in office, and on conviction be sentenced to pay a fine not exceeding one thousand dollars and undergo an imprisonment, by separate or solitary confinement at labor, not exceeding five years, and if still in office, be adjudged thereafter incapable of exercising the same, and the said office shall be forthwith declared vacant by the court passing sentence.

Sec. 62, Act of March 31, 1860, P. L. 382.

This section does not make the borrower responsible: *Pittsburgh v. Moreland*, 47 P. L. J. 195.

For requirements of indictment under this section, see *Com. v. Quay*, 7 D. R. 723, *Com. v. Rupp*, 9 Watts 111.

Public money as defined by this section properly includes the money of a city and a city treasurer cannot loan the money of the city for his personal benefit: *Com. v. Murcer*, 29 Leg. Int. 52.

This act is not limited in terms to public money and it applies to any money under control of such officer by virtue of his office, and an indictment charging the lending of such money is sufficient: *Commonwealth v. Ambler*, No. 1, 30 D. R. 437.

2132. If any such officer shall enter into any contract or agreement with any bank, corporation or individual, or association of individuals, by which said officer is to derive any benefit, gain or advantage from the deposit with such bank, corporation or individual, or association, of any money or valuable security held by him, or which may be in his possession, or under his control by virtue of his

said office, he shall be guilty of a misdemeanor, and on conviction, be sentenced to pay a fine not exceeding one thousand dollars, and to undergo an imprisonment not exceeding one year, and if still in office, be adjudged thereafter incapable of exercising the same, and the said office shall be forthwith declared vacant by the court passing sentence.

Sec. 63, Act of March 31, 1860, P. L. 382.

By analogy with *County of Lackawanna v. Duffy*, 248 Pa. 575, the moneys of a township, with which the township treasurer is entrusted, do not belong to him, but to the township, and any interest paid by the banks in which the said moneys are deposited belongs to the township and not to the treasurer.

(b) Embezzlement.

2133. If any state, county, township or municipal officer of this Commonwealth, charged with the collection, safe keeping, transfer, or disbursement of public money, shall convert to his own use, in any way whatsoever, or shall use by way of investment in any kind of property or merchandise, any portion of the public money entrusted to him for collection, safe keeping, transfer or disbursement, or shall prove a defaulter, or fail to pay over the same when thereunto legally required by the state, county or township treasurer or other proper officer or person authorized to demand and receive the same, every such act shall be deemed and judged to be an embezzlement of so much of the said money as shall be thus taken, converted, invested, used or unaccounted for, which is hereby declared a misdemeanor; and every such officer, and every person or persons whomsoever aiding or abetting or being in any way accessory to said act, and being thereof convicted, shall be sentenced to an imprisonment, by separate or solitary confinement at labor, not exceeding five years, and pay a fine equal to the amount of the money embezzled.

Sec. 65, Act of March 31, 1860, P. L. 382.

Each of the acts specified in this section is a complete offense, but when two or more of such are in fact only successive steps in one appropriation of the same money, they then constitute but a single offense, and may be charged in the same indictment: *Com. v. Mentzer*, 162 Pa. 846, affirming 10 Lanc. L. R. 188.

As to sufficiency of indictment, see *Com. v. Carson*, 21 Super. Ct. 48.

On a trial for being accessory to an embezzlement, the guilt of the principal must be first proved either by the record of his conviction or otherwise: *Com. v. House*, 10 Super. Ct. 259.

On question of evidence generally, see *Com. v. House*, 8 Super. Ct. 92.

In the civil courts constructive demands may be made and are recognized, but not so in a criminal court in the prosecution for an offense having as one of its statutory ingredients a refusal to pay on demand. A demand there means actual demand: *Com. v. Shoener*, 212 Pa. 527, s. c. 216 Pa. 71.

A public officer cannot be convicted for failing to pay over public moneys on proper demand, as provided in this section, until an actual and not a constructive, demand has been made by the proper officer or party authorized to demand and receive the same, and no offense is committed until such demand has been made, and the statute of limitations begins to run from the date of the demand: *Com. v. Shoener*, 216 Pa. 71, affirming 30 Super. Ct. 321.

Where during the term of office of a tax collector it is discovered that he has appropriated money received as taxes to his own use, and such conversion and appropriation is established by competent evidence, the offense is complete. In such a case it is not necessary to show a prior demand by some one authorized to make such demand: *Com. v. Sittler*, 67 Super. Ct. 1, affirming 2 Northum. L. J. 430, 12 Sch. 468, 3 Northum. L. J. 138.

2134. If any person charged with the collection, safe keeping, or transfer of any state, county, township, school, city, borough, or municipal taxes, under any law or laws of this Commonwealth, shall convert or appropriate the moneys so collected, or any part thereof, to his own use in any way whatever, or shall use by way of investment in any kind of property or merchandise any portion of the money so collected by him from such tax or taxes, and shall prove a defaulter or fail to pay over the same or any part thereof at the time or times, place or places, required by law and to the person or persons legally authorized to demand and receive the same, every such act shall be deemed and adjudged to be an embezzlement of so much of said money as shall be thus taken, converted, appropriated, embezzled, used, or unaccounted for, which is hereby declared a misdemeanor; and every such tax collector and every person or persons whomsoever aiding or abetting or being in any way accessory to such act, and, being thereof convicted, shall be sentenced to an imprisonment not exceeding five years, or pay a fine not exceeding five thousand dollars, or both, at the discretion of the court.

Sec. 1, Act of June 3, 1885. P. L. 72, No. 45.

As to sufficiency of indictment hereunder, see *Com. v. Barge*, 11 Super. Ct. 164.

An agreement between an insolvent tax collector and his assignee that unpaid taxes legally assessed be appropriated to the payment of the individual debts of the collector and credited to the property owner is void, as against public policy, and because specially prohibited by this act: *Com. v. Mahon*, 12 Super. Ct. 616.

A tax collector is liable under this act, if in default two years prior to the indictment: *Com. v. McCullough*, 19 Super. Ct. 412.

A court in imposing sentence is limited to the punishment prescribed by the terms of the violated statute. This act provides for a sentence not exceeding five years; the Act of June 26, 1895, P. L. 374, limits simple imprisonment to the county jail, hence a sentence for a crime under the Act of 1885 must be in the county jail and not in the penitentiary: *Com. v. John H. Barge*, 11 Super. Ct. 164.

Where a tax collector appropriates money received as taxes, to his own use, and such conversion and appropriation is established by competent

evidence, the offence is complete. The above act prescribes four separate and distinct offences. It is not necessary to show a prior demand by some one authorized to make such demand. Any person who knows the facts or is reliably informed thereof may act as prosecutor. The Act of July 9, 1897, P. L. 242, and May 21, 1913, P. L. 284, do not prevent the prosecution of a tax collector under this act: *Com. v. Sitler*, 67 *Super. Ct. 1*, affirming 12 *Sch. 408*, 2 *Northum. L. J.* 430, 3 *Northum. L. J.* 138.

A defaulting tax collector may be prosecuted for embezzlement under this act notwithstanding the pendency of proceedings under sections 18 and 19 of the Act of April 11, 1799, 3 Sm. L. 392: *Com. v. Miller*, 13 *D. R.* 147, s. c. 2 *Just. L. R.* 12, 20 *Lanc. L. R.* 285, 18 *York*, 50, 5 *Lack. J.* 174.

2135. If any person, being an officer, director, superintendent, manager, receiver, employe, agent, attorney, broker, or member of any bank or other body corporate, or public company, municipal or quasi municipal corporation, shall fraudulently take, convert or apply to his own use, or the use of any other person, any of the money or other property of such bank, body corporate or company municipal or quasi municipal corporation, or belonging to any person or persons, corporation or association, and deposited therein, or in possession thereof, he shall be guilty of a misdemeanor.

Sec. 116, Act of March 31, 1860, P. L. 382, as amended by Sec. 1, Act of June 12, 1878, P. L. 196.

Sec. 5, of the Act of 1878, fixes the punishment at a fine not exceeding one thousand dollars, and imprisonment by separate or solitary confinement at labor not exceeding six years. See sec. 2142.

An employe of the Philadelphia gas works was held to be an employe of a municipal or quasi-municipal corporation within this act: *Culp v. Com.*, 109 *Pa.* 363, affirming 16 *Phila.* 496.

As to the sufficiency of an indictment hereunder, see *Com. v. Hottenstein*, 2 *Woodw.* 477; *Com. v. Koons*, 1 *Kulp* 134, s. c. 9 *Luz.* 171.

For time within which action must be brought under this section, see section 2143.

(c) Public Contracts.

2136. It shall not be lawful for any councilman, burgess, trustee, manager or director, of any corporation, municipality or public institution, to be at the same time a treasurer, secretary or other officer, subordinate to the president and directors, who shall receive a salary therefrom, or be the surety of such officer, nor shall any member of any corporation or public institution, or any officer or agent thereof, be in anywise interested in any contract for the sale or furnishing of any supplies, or materials to be furnished to or for the use of any corporation, municipality or public institution of which he shall be a member or officer, or for which he shall be an agent, nor directly nor indirectly interested therein, nor receive any reward or gratuity from any person interested in such contract or sale; and any person

violating these provisions, or either of them, shall forfeit his membership in such (corporation), municipality or institution, and his office or appointment thereunder, and shall be held guilty of a misdemeanor, and on conviction thereof be sentenced to pay a fine not exceeding five hundred dollars: (Provided, that nothing in this section contained, shall prevent a vice president of any bank from being a director of such bank, or of receiving a salary as vice president.)

Sec. 66, Act of March 31, 1860, P. L. 382.

A councilman cannot be surety on the bond of the city treasurer: *Com. v. Allen*, 70 Pa. 465. But a county commissioner may be surety on the official bond of the county treasurer: *Com. v. Krickbaum*, 199 Pa. 351. The fact that one auditor is surety for the treasurer whose accounts he audits does not impeach the settlement: *Hamburg Borough v. Doering*, 8 D. R. 131.

An indictment will not lie against a borough councilman who furnishes supplies or materials to the borough, unless he is a member of some corporation or public institution which is interested in the contract with the borough: *Com. v. Naylor*, 8 Lack. L. N. 20.

This act applies to a councilman who is a stockholder in a company that has a contract to furnish the municipality with electric lights, and this though the contract was made with the company of which the councilman was a stockholder and secretary previous to his being elected to council: *Com. v. De Camp*, 177 Pa. 112, s. c. 39 W. N. C. 69; *Com. v. McAroy*, 9 Kulp 168. See *Appeal of Harrison Township*, 20 Pa. C. C. 54, s. c. 45 P. L. J. 196.

This act does not apply to officers of a private corporation: *Keystone Surgical Supply Co. v. Bate*, 187 Pa. 460. And trustees of an insurance company, one of whom is its solicitor, the other its traveling representative, neither being denominated an officer by its by-laws, are not within this section: *Com. v. Christian*, 9 Phila. 556.

The manifest intent of this section is that an officer of a municipality shall not make any contract in which he is necessarily interested: *Appeal of Harrison Township*, 20 Pa. C. C. 54, s. c. 45 P. L. J. 196. But this financial interest must be established, not merely alleged: *Clapper v. Greensburg*, 48 P. L. J. 112.

A contract between a municipality entered into through its councils, and a private corporation, some of whose officers and stockholders are councilmen, is void: *Kennett Electric Light Company v. Kennett Sq. Borough*, 4 D. R. 707, s. c. 9 York 65; 6 Del. 229.

A borough ordinance providing for a contract with a water company for a supply of water to the borough, enacted when a majority of the councilmen were stockholders in the water company, is illegal and void and no liability can be enforced thereon; nor will the fact that, for several years afterward the borough used and paid for water supplied under the contract, and that in some of those years, when the bills were passed, less than a majority, or none at all, of the councilmen were stockholders of the water company, constitute a ratification of such contract: *Borough of Milford v. Milford Water Co.*, 124 Pa. 610.

The words "any member of any corporation" refer to the corporation purchasing or receiving the supplies or materials, and of which the individual is a member, an officer or an agent. It is plainly intended to prevent anyone

who is a member, officer or agent of any corporation, municipality or public institution from being in anywise interested, directly or indirectly, in the furnishing of supplies or materials to the corporation, municipality or public institution with which he is officially connected. The statute intends to prohibit persons from occupying a position in which they will be virtually contracting with themselves, so that a councilman who is co-owner, with his brother of a quarry and joins in ratifying by councils, of a contract with his brother to supply the municipality with stone from his quarry, may be convicted of violating this section: *Com. v. Witman*, 217 Pa. 411.

While a stockholder and the secretary of a water company, who is also a member of a borough council, is disqualified from voting on an ordinance for the supply of the borough with water by said company, yet the ordinance is not rendered invalid if it appears that the contract is legitimate, and that a majority of the members of the council, without counting such member, voted for such ordinance: *Marshall v. Ellwood City Borough*, 189 Pa. 348, s. c. 43 W. N. C. 482; *Com. v. Naylor*, 8 Lack. L. N. 20; *Crawford v. Borough of Clifton Heights*, 8 Del. 313, s. c. 15 York 119.

"Supplies" and "materials" include horses, wagons, and labor: *In re Hazle Township*, 1 D. R. 813, s. c. 6 Kulp. 491; also coal and wood: *Wolford v. School Dist. of Upper Salford*, 46 Super. Ct. 1, affirming 8 Just. L. R. 134, 135.

A borough cannot enter into a contract for sewer supplies with a borough officer: *Riebe v. Walton*, 18 Pa. C. C. 289, s. c. *sub nomine Riebe v. Lansford Borough*, 5 D. R. 557.

The fact that a person, while a member of the town council, is also a member of a firm, which in the usual course of its business furnishes certain supplies for ordinary repairs and ordinary use in a department of the borough, without previous contract, is not sufficient to subject such councilman to the penal provisions of this section: *Com. v. Hilbish*, 12 Pa. C. C. 25, *Com. ex rel. v. Sword*, 63 P. L. J. 145, s. c. 6 M. L. R. 201.

This act does not apply to the purchase by a councilman of supplies from a corporation without the knowledge of another member of the council who was treasurer of the corporation: *Com. v. Swords*, 6 M. L. R. 201, s. c. 63 P. L. J. 145; nor does it extend to a health officer so as to prohibit his receiving a salary from a municipality: *Snyder v. Brookville Boro.*, 12 Just. L. R. 234.

A councilman, manager and stockholder of a concern furnishing the borough with supplies is removable on quo warranto under this section: *Com. v. Collins*, 18 D. R. 893.

This statute is penal and must be strictly construed. Money is not within its letter, and certainly is not within its spirit, and therefore the act does not apply to a case where a borough council authorizes a loan on a bank, and a member of the council authorizing such loan is also a member of the banking institution: *Long v. Lemoyne Boro.*, 222 Pa. 311, 318.

A stockholder of a gas company, who is also superintendent, which company furnishes gas to a borough, is disqualified from holding office under this act and the Act of May 28, 1907, P. L. 262: *Com. ex. rel. v. Layton*, 59 P. L. J. 488, 489, s. c. 3 M. L. R. 74.

This section does not confine the interest of a member of town council to a money or pecuniary interest coming directly to the member of the corporation. Members of council who are also members of a fire company, violate the act of assembly, if they enter into a contract between the borough and such fire company and will be ousted from their office of council: *Com. ex. rel. Brown v. Pfeil et al.*, 31 York 89, s. c. 13 Sch. 292, 3 Northum. L. J. 167.

One financially interested in a public service corporation of a municipality cannot remain a member of the school board during the life of a contract of said corporation to support schools with its product: *Com. v. Hauser, 19 Luz. 387.*

A contract made by the supervisors of a township of the second class for lighting village streets will be void if one of the supervisors is a stockholder in the electric company, with which the contract is made, since a township is a municipality and included within the terms of the act: *Dreese et al. v. Beaver Township Supervisors, et al. 24 D. R. 586, s. c. 42 Pa. C. C. 242.*

A councilman employed by a water company furnishing water to a borough under contract, on which he never voted or with which he was never concerned, cannot be removed by quo warranto under this act: *Com. v. Wineman, 21 D. R. 911; s. c. 1 West 238, 4 M. L. R. 31.*

This section and the Act of May 28, 1907, P. L. 262, do not contravene Art. 6, Sec. 4, of the constitution, and quo warranto is the proper proceeding to declare the office of councilman forfeited: *Com. v. Larden, 18 D. R. 716, s. c. 35 Pa. C. C. 331.*

The furnishing by a borough councilman of teams and drivers for the public work of the borough and receiving compensation therefor is furnishing supplies and cause for removal upon quo warranto: *Com. ex rel. v. Cloud, 19 D. R. 299, s. c. 2 M. L. R. 3, 36 Pa. C. C. 190.*

On a quo warranto the court will give judgment of ouster against an offending councilman, under this section, without a previous conviction on an indictment: *Com. v. Allen, 70 Pa. 465.*

A councilman who is surety on the bond of the city treasurer will be ousted on quo warranto: *Com. v. Allen, 70 Pa. 465*; and so will a councilman who is a stockholder in and secretary of a corporation which had a contract for furnishing the city with electric lights: *Com. v. DeCamp, 177 Pa. 112.*

As no member of a governing body may vote on any question involving his own character or conduct, his right as a member or his pecuniary interest, if that be immediate, particular and distinct from the public interest, a member of a borough council is disqualified from voting for a resolution accepting his resignation from the council. If elected water superintendent of the borough after such resignation he will be ousted on quo warranto: *Com. v. Raudenbush, 249 Pa. 86.*

One who is a stockholder in a corporation holding a contract with a borough at the time of his election as councilman thereof who bona fide parts with his stock before taking his seat as a member of council does not forfeit his right to the office: *Com. ex rel. Gast v. Kelly, 255 Pa. 475.*

A borough engineer is an agent of the municipality and a contract between him and the borough for paving one of its streets is void, and the borough cannot collect any of the expenses thereof from the abutting property owners: *McAdoo Borough v. Daily, 13 M. L. R. 17, s. c. 17 Sch. 126.*

This section does not prohibit the township supervisors from employing the teams of a road boss in repairing township roads: *Wood, et al., v. Winslow Township, 26 D. R. 575.* But compensation for such services cannot be collected unless expressly authorized by the supervisors: *Andrus v. Shippen Township, 36 Super. Ct. 22, rev. 34 Pa. C. C. 312, 6 Just. L. R. 103.*

This section applies to township supervisors and forbids the employment of their own teams and children to their own profit upon the roads of their township: *Core's Case, 11 Pa. C. C. 639; Cameron Township Auditor's Report, 25 D. R. 277; Versailles Township Auditor's Report, 23 D. R. 781, s. c. 61 P. L. J. 497.*

A township supervisor may employ his minor son to work on the township highway, provided the son is fully emancipated and his father has no interest whatsoever in the proceeds of the son's labor: *Mitchell v. Berlin Township*, 28 D. R. 993.

2137. Any person who shall contract for the sale, or sell any supplies or materials as aforesaid, and shall cause to be interested in any such contract or sale, any member, officer or agent, of any corporation, municipality or institution or give or offer to give any such person any reward or gratuity, to influence him or them in the discharge of their official duties, shall not be capable of recovering any thing upon any contract or sale, in relation to which he may have so practiced or attempted to practice corruptly, but the same shall be void, and such party shall be guilty of a misdemeanor, and on conviction thereof, be sentenced to pay a fine not exceeding five hundred dollars.

Sec. 67, Act of March 31, 1860, P. L. 382.

(d) Offenses Against the Currency.

2138. If any officer of any municipal or other corporation, not authorized by law shall be instrumental in, or shall consent to or connive at the making or issuing of any note, bill, check, ticket or order, intended to be used as currency, he shall be guilty of a misdemeanor, and on conviction thereof, be sentenced to pay a fine not exceeding one thousand dollars for each offense, and to undergo an imprisonment not exceeding six months.

Sec. 68, Act of March 31, 1860, P. L. 382.

(e) Public Accounts.

2139. If any person, being an officer, director, superintendent, manager, receiver, employe, agent, attorney, broker, or member of any body corporate or public company, or municipal or quasi municipal corporation, shall as such receive or possess himself of any money or other property of such corporate or public company, municipal or quasi municipal corporation, otherwise than in payment to him of a just debt or demand, and shall with intent to defraud, omit to make or cause or direct to be made, a full and true entry thereof in the books and accounts of such body corporate, public company, municipal or quasi municipal corporation, he shall be guilty of a misdemeanor.

Sec. 117, Act of March 31, 1860, P. L. 382, as amended by Sec. 2, Act of June 12, 1878, P. L. 196.

This section and the other sections of this act, amending the Act of 1860, are not unconstitutional because they recite sections only as amended: *Com. v. Bamberger* No. 1, 33 *Lanc. L. R.* 65, s. c. 25 D. R. 652; *Com. v. Flecker*, 17 *Pa. C. C.* 671, s. c. 8 *Kulp*, 225.

For penalty provided for violation of this section and for time within which action must be brought hereunder, see sections 2142 and 2143.

2140. If any officer, director, superintendent, manager, receiver, employe, agent, attorney, broker, or member of any bank or other body corporate, or public company, municipal, or quasi municipal corporation, shall, with intent to defraud, destroy, alter, mutilate or falsify any of the books, papers, writings or securities belonging to the bank, body corporate or public company, municipal or quasi municipal corporation, of which he is a director, officer, superintendent, manager, receiver, employe, agent, attorney, broker or member, or shall make or concur in the making of any false entry or any material omission in any book of accounts or other document, he shall be guilty of a misdemeanor.

Sec. 118, Act of March 31, 1860, P. L. 382, as amended by Sec. 3, Act of June 12, 1878, P. L. 196.

For penalty provided for violation of and for time which action must be brought under this section, see Sections 2142 and 2143.

(f) False Statements.

2141. If any officer, director, superintendent, manager, receiver, employe, agent, attorney, broker, or member of any bank or other body corporate, or public company, municipal or quasi municipal corporation, shall make, circulate or publish, or concur in making, circulating or publishing, any written or printed statement or account, which he shall know to be false in any particular, with intent to deceive or defraud any member, shareholder or creditor of such body corporate or public company, municipal or quasi municipal corporation, or with intent to induce any person to become a shareholder or partner therein, or to interest or advance any money or property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor.

Sec. 119, Act of March 31, 1860, P. L. 382, as amended by Sec. 4, Act of June 12, 1878, P. L. 196.

2142. Every person found guilty of a misdemeanor under any or either of the preceding sections of this title, wherein the nature and extent of the punishment is not specified, shall be sentenced to pay a fine not exceeding one thousand dollars, and to undergo an imprisonment by separate or solitary confinement at labor not exceeding six years.

Sec. 5, Act of June 12, 1878, P. L. 196.

2143. Indictments for misdemeanors committed by any officer, director, receiver, superintendent, manager, broker, attorney, agent,

employe or member of any bank, body corporate or public company, municipal or quasi municipal corporation, may be commenced and prosecuted at any time within four years from the time the alleged offense shall have been committed.

Sec. 6, Act of June 12, 1878, P. L. 196.

The limitation period is fixed by the act under which the indictment is found: *Com. v. Swab*, 59 Super. Ct. 485; *Com. v. Schering*, 61 Super. Ct. 261.

Where the statute under which the prosecution is brought requires a demand, it is an actual and not a constructive demand and the statute of limitations begins to run from the date that the demand was made: *Com. v. Shoener*, 216 Pa. 71, affirming 30 Super. Ct. 321.

An indictment commenced and prosecuted at any time within four years from the time the alleged offense was committed is within the statutory limitation: *Com. v. Clevestine*, 66 Super. Ct. 125; *Culp v. Com.*, 109 Pa. 363.

The limitation of four years prescribed in this section does not apply to the prosecution of any attorney-at-law for misappropriation of moneys entrusted to his care: *Com. v. Bretz*, 28 D. R. 918, s. c. 1919 Dauphin 29. 67 P. L. J. 153.

(g) Use of Township Lockups.

2144. Sheriffs, constables, members of the State constabulary, or other persons authorized by the laws of this Commonwealth to make arrests, hereafter shall have the use, for a period not to exceed forty-eight hours, of borough and township lockups and city or county prisons, for the detention of prisoners until they can be disposed of according to law, if found necessary by the officer in charge.

Sec. 1, Act of April 23, 1909, P. L. 141.

2145. Boroughs, cities, and townships shall be entitled to receive a compensation of fifty cents per day, of twenty-four hours, for each prisoner so incarcerated, from the treasury of the county having jurisdiction over the prisoner.

Sec. 2, Act of April 23, 1909, P. L. 141.

Under this act the expense of maintaining prisoners confined in city, borough or township lock-ups for forty-eight hours, charged with statutory offenses must be borne by the county, but there is no liability for those charged with violation of municipal ordinances: *McKeesport v. Allegheny County*, 21 D. R. 326, s. c. 60 P. L. J. 248.

(h) Maintenance of Prisoners.

2146. Hereafter when a prisoner shall be committed to any county jail or prison in this Commonwealth, either for the nonpayment of a fine or penalty for the violation of any city or borough ordinance, or any ordinance of a township of the first class, or while awaiting a

hearing upon any charge for the violation of any city or borough ordinance, or any ordinance of a township of the first class, the costs of proceedings and the expenses of maintaining such prisoner during his confinement by virtue of any such commitment, shall be borne and paid by the city, borough, or township of the first class whose ordinances were alleged to have been violated, or to which any such fines or penalties are payable; and the county in which such city, borough or township of the first class is located shall not be liable to the sheriff for any such maintenance, or to any officer, magistrate, or person for any costs of such proceedings.

Sec. 1, Act of June 7, 1911, P. L. 677. This act supplies the Act of March 28, 1905, P. L. 61.

Under the Act of 1905, P. L. 61, it was held that the city was not liable for the sheriff's fees for commitment and discharge of such prisoners as are included within the provisions of the act: *Manifold v. City of York*, 15 D. R. 191; 19 York 85; See *Sedwick v. Erie Co.*, 7 Just. L. R. 218.

The Act of March 28, 1905, P. L. 61, repeals the local Act of March 28, 1870, P. L. 619, Sec. 30, relating to the maintenance of prisoners in the prison of Clinton County: *Mussina v. Clinton Co.*, 35 Pa. C. C. 155, s. c. 17 D. R. 1093.

The Act of March 28, 1905, P. L. 61, applies to Lehigh County, notwithstanding its special Act of April 6, 1869, P. L. 716; it is a general act and applies not merely to counties where the sheriff has charge of the prisoners in the county jail. "The expense of maintaining," as used in the act means only the board of prisoners, and not everything that is required for their support including room, clothing, bed, food and fuel: *County of Lehigh v. City of Allentown*, 4 Lech. 176.

CHAPTER L.

BUREAU OF MUNICIPALITIES.

2147. The Secretary of Internal Affairs shall establish in the said Department of Internal Affairs a Bureau of Municipalities. The said Bureau shall gather, classify, index, make available, and disseminate data, statistical information, and advice that may be helpful in improving the methods of administration and municipal development in the several municipalities of the Commonwealth; and shall maintain, for the benefit of the municipalities, a publicity service to install or assist in the installation and establishment of modern systems of accounting in the various municipalities of the State, and in order to promote a comprehensive plan or series of plans for the probable future requirements of cities, boroughs, or townships of the Commonwealth, either separately or jointly, in respect to a system of traffic thoroughfares and other highways or main highways, transportation of every sort, suitably, coordinated sites for public buildings, parks,

parkways, playgrounds, and other public uses, the preservation of natural and historic features, and any and all public improvements tending to the advantage of municipalities or townships affected, tending to their advantage as a place of business and residence, and to either make or secure or assist in making or securing the necessary surveys, plans, and information.

Sec. 1, Act of April 4, 1919, P. L. 45.

2148. The Secretary of Internal Affairs is hereby authorized to employ a Chief of Bureau of Municipalities, who in his judgment shall be qualified to perform the duties herein described. He is also authorized to employ such engineering, accounting, clerical, stenographic, and other expert service, relating to the gathering of information, its distribution and publication and other duties incident to the purpose of the Bureau, or transfer to such duties in this bureau as he may find advisable the work and services of other bureaus or of others employed in the Department. The salaries of the employees appointed under the provisions of this act shall be fixed by the Secretary of Internal Affairs, and shall be paid from the funds appropriated to the said Department of Internal Affairs.

Sec. 2, Act of April 4, 1919, P. L. 45.

2149. It is hereby made the duty of every city, borough, township, or county official, to furnish such information as may be requested by the Chief of the Bureau of Municipalities or his duly authorized deputy.

Sec. 3, Act of April 4, 1919, P. L. 45.

It is the duty of city and borough officials to furnish any information requested of them under this section for which services they are entitled to no compensation, but such duty is not imposed upon any official other than those expressly designated: *In re Bureau of Mun. Opinion of Emerson Collins Dep. Atty. Gen., 4 Dep. Rep. 767.*

CHRONOLOGICAL TABLE OF STATUTES.

Constitution of Pennsylvania				Section
Art. IX	Sec.	10.	1643	
		15.	1641	
		15.	1654	
Art. XII	Sec.	2.	1530	
Art. XV	Sec.	2.	1642	
1705, 1 Sm. L. 70	Sec.	1.	1982	
		2.	1983	
		3.	1984	
		4.	1985	
1725, August 14, 1 Sm. L. 168	Sec.	2.	1920	

	Sec. 3, ...	1921
1729, May 10, 1 Sm. L. 176	Sec. 1, ...	1986
1802, April 6, P. L. 178	Sec. 8, ...	1586
1804, April 3, P. L. 517	Sec. 6, ...	1587
1807, April 13, P. L. 286	Sec. 2, ...	1971
	Sec. 3, ...	1972
	Sec. 4, ...	1973
	Sec. 5, ...	1977
	Sec. 6, ...	1978
	Sec. 7, ...	1979
1819, March 5, P. L. 87	Sec. 2, ...	1971
	Sec. 3, ...	1975
1834, April 15, P. L. 509	Sec. 36, ...	1551
	Sec. 37, ...	1552
	Sec. 38, ...	1553
	Sec. 41, ...	1579
	Sec. 44, ...	1562
	Sec. 46, ...	1588
	Sec. 50, ...	1589
	Sec. 51, ...	1567
1834, April 15, P. L. 537	Sec. 87, ...	1544
1836, June 13, P. L. 551	Sec. 1, (Amended)	1726
	Sec. 2, ...	1735
	Sec. 3, ...	1739
	Sec. 4, ...	1745
	Sec. 5, (Amended)	1746
	Sec. 7, ...	1747
	Sec. 8, ...	1749
	Sec. 9, ...	1752
	Sec. 11, (Amended)	1768
	Sec. 12, ...	1768
	Sec. 13, ...	1770
	Sec. 14, ...	1772
	Sec. 15, ...	1773
	Sec. 16, ...	1774
	Sec. 17, ...	1775
	Sec. 18, ...	1777
	Sec. 19, ...	1778
	Sec. 20, ...	1781
	Sec. 21, ...	1782
	Sec. 22, ...	1783
	Sec. 23, ...	1784
	Sec. 24, ...	1785
	Sec. 25, ...	1758
	Sec. 26, ...	1727
	Sec. 35, (Amended)	1883
	Sec. 37, ...	1887
	Sec. 38, (Amended)	1888
	Sec. 48, ...	1916
	Sec. 49, ...	1917
	Sec. 50, ...	1918
	Sec. 51, ...	1730

	Section
Sec. 52, ...	1737
Sec. 53, ...	1734
Sec. 54, ...	1759
Sec. 55, ...	1751
Sec. 57, ...	1771
Sec. 58, ...	1731
Sec. 59, ...	1744
Sec. 60, ...	1760
1840, June 13, P. L. 683	Sec. 2, ...
1840, May 29, P. L. 749	Sec. 1, ...
1841, May 27, P. L. 400	Sec. 8, ...
1842, March 11, P. L. 62	Sec. 1, ...
	Sec. 2, ...
	Sec. 3, ...
	Sec. 4, ...
	Sec. 5, ...
	Sec. 6, ...
	Sec. 7, ...
	Sec. 8, ...
1842, April 5, P. L. 230	Sec. 7, ...
	Sec. 8, ...
	Sec. 9, ...
1844, April 29, P. L. 486	Sec. 42, ...
1846, April 21, P. L. 416	Sec. 1, ...
1846, April 22, P. L. 486	Sec. 21, ...
1848, March 30, P. L. 308	Sec. 1, ...
1848, April 11, P. L. 517	Sec. 3, ...
1849, April 5, P. L. 397	Sec. 1, ...
1850, April 25, P. L. 569	Sec. 22, ...
	Sec. 31, ...
1855, May 3, P. L. 422	Sec. 1, ...
1856, April 21, P. L. 477	Sec. 3, ...
1858, March 5, P. L. 78	Sec. 1, ...
1860, March 31, P. L. 382	Sec. 62, ...
	Sec. 63, ...
	Sec. 65, ...
	Sec. 66, ...
	Sec. 67, ...
	Sec. 68, ...
	Sec. 116, (Amended)
	Sec. 117, (Amended)
	Sec. 118, (Amended)
	Sec. 119, (Amended)
1862, March 22, P. L. 164	Sec. 1, (Amended)
	Sec. 2, (Amended)
1864, April 30, P. L. 218	Sec. 4, (Amended)
1867, March 26, P. L. 45	Sec. 1, ...
	Sec. 2, ...
1868, April 6, P. L. 67	Sec. 1, ...
1869, April 15, P. L. 46	Sec. 1, ...
1873, May 1, P. L. 87	Sec. 1, (Amended)

	Sec. 2, ...	1670
	Sec. 3, ...	1671
	Sec. 4, ...	1672
1874, April 20, P. L. 65	Sec. 1, ...	1644
	Sec. 2, (Amended)	1645
	Sec. 3, (Amended)	1646
	Sec. 4, (Amended)	1647
	Sec. 5, ...	1652
	Sec. 6, (Amended)	1653
	Sec. 7, ...	1659
1874, May 14, P. L. 164	Sec. 1, ...	1738
1874, May 23, P. L. 222	Sec. 1, ...	1673
1875, April 12, P. L. 46	Sec. 1, ...	1653
1876, April 28, P. L. 51	Sec. 1, (Amended)	1852
	Sec. 2, ...	1853
	Sec. 4, ...	1854
	Sec. 5, ...	1855
1876, May 5, P. L. 112	Sec. 1, ...	1889
	Sec. 2, ...	1890
1876, May 8, P. L. 128	Sec. 1, ...	1660
1876, May 8, P. L. 145	Sec. 1, ...	1761
	Sec. 2, ...	1762
1878, May 25, P. L. 150, No. 190	Sec. 1, ...	1807
1878, May 25, P. L. 150, No. 191	Sec. 1, ...	1560
1878, June 12, P. L. 196	Sec. 1, ...	2135
	Sec. 2, ...	2139
	Sec. 3, ...	2140
	Sec. 4, ...	2141
	Sec. 5, ...	2142
	Sec. 6, ...	2143
1879, May 2, P. L. 47	Sec. 1, ...	1669
1879, June 11, P. L. 146	Sec. 1, (Amended)	1911
	Sec. 2, ...	1913
1881, April 14, P. L. 10	Sec. 1, (Amended)	1661
1881, June 10, P. L. 105	Sec. 1, ...	1763
1885, April 24, P. L. 9	Sec. 1, ...	1987
	Sec. 3, ...	1989
1885, June 3, P. L. 72, No. 45	Sec. 1, ...	2134
1885, June 25, P. L. 168	Sec. 1, ...	1852
1885, June 25, P. L. 187	Sec. 4, ...	1561
	Sec. 5, ...	1564
	Sec. 6, ...	1565
	Sec. 8, ...	1566
	Sec. 10, ...	1578
	Sec. 12, ...	1594
1887, May 23, P. L. 178	Sec. 1, ...	1574
1887, May 23, P. L. 180	Sec. 1, ...	1764
1887, June 6, P. L. 363	Sec. 1, ...	1595
1889, April 26, P. L. 64	Sec. 1, ...	1880
	Sec. 2, ...	1981
1889, May 8, P. L. 120	Sec. 1, ...	1732
1891, April 15, P. L. 17	Sec. 1, ...	1734
	Sec. 2, ...	1755

1891, May 23, P. L. 109	Sec. 1.	1748
1891, May 26, P. L. 116	Sec. 1.	1756
	Sec. 2.	1757
1891, June 9, P. L. 252	Sec. 1. (Amended)	1646
1895, April 18, P. L. 36	Sec. 1.	1647
1895, May 22, P. L. 111	Sec. 1.	1585
1895, June 18, P. L. 203	Sec. 20, (Amended)	1533
1895, June 25, P. L. 269	Sec. 1.	2005
	Sec. 2.	2006
1895, June 25, P. L. 296	Sec. 1.	1570
	Sec. 4.	1571
1895, June 26, P. L. 336	Sec. 1. (Amended)	1802
1895, June 28, P. L. 408	Sec. 2. (Amended)	1674
1897, April 13, P. L. 17	Sec. 1. (Amended)	1645
1897, May 5, P. L. 39	Sec. 1.	1546
1897, May 11, P. L. 53	Sec. 1.	1647
1897, May 19, P. L. 77	Sec. 1.	2098
1897, May 26, P. L. 108	Sec. 1.	1504
	Sec. 2.	1505
	Sec. 3.	1506
	Sec. 4.	1507
1897, June 7, P. L. 135	Sec. 1.	1583
	Sec. 2.	1584
1897, July 9, P. L. 242	Sec. 1.	1572
	Sec. 2.	1573
1897, July 14, P. L. 266	Sec. 1.	1514
	Sec. 2.	1515
	Sec. 3.	1516
1899, March 1, P. L. 6	Sec. 1.	1661
1899, May 2, P. L. 163	Sec. 1.	1959
	Sec. 2.	1960
1899, May 2, P. L. 176	Sec. 1.	1728
1901, April 4, P. L. 65	Sec. 1.	1768
1901, April 19, P. L. 81	Sec. 1.	1592
1901, April 19, P. L. 82	Sec. 1. (Amended)	1932
	Sec. 2.	1933
	Sec. 3, (Amended)	1934
1901, May 1, P. L. 110	Sec. 1.	1793
	Sec. 2.	1794
1901, May 2, P. L. 111	Sec. 1.	2128
	Sec. 2.	2129
	Sec. 3.	2130
1901, May 21, P. L. 268	Sec. 1.	1914
1901, June 4, P. L. 364	Sec. 1.	1678
	Sec. 1. (Amended) 1679, 1680, 1681, 1682	
	Sec. 3.	1683
	Sec. 4. (Amended)	1684
	Sec. 5. (Amended)	1685
	Sec. 8.	1686
	Sec. 9.	1687

		Section
1901, June 4, P. L. 364,	Sec. 10, (Amended)	1688
	Sec. 11, ...	1690
	Sec. 12, (Amended)	1691
	Sec. 13, (Amended)	1692
	Sec. 14, ...	1693
	Sec. 15, ...	1694
	Sec. 16, ...	1695
	Sec. 17, (Amended)	1696
	Sec. 18, (Amended)	1697
	Sec. 19, ...	1698
	Sec. 20, (Amended)	1699
	Sec. 21, ...	1700
	Sec. 22, (Amended)	1701
	Sec. 23, ...	1702
	Sec. 24, ...	1703
	Sec. 25, ...	1704
	Sec. 26, (Amended)	1705
	Sec. 27, ...	1706
	Sec. 28, ...	1707
	Sec. 29, ...	1708
	Sec. 30, (Amended)	1709
	Sec. 31, ...	1710
	Sec. 32, (Amended)	1711
	Sec. 33, ...	1712
	Sec. 34, ...	1713
	Sec. 35, ...	1714
	Sec. 36, ...	1715
	Sec. 37, (Amended)	1716
	Sec. 38, ...	1717
	Sec. 39, ...	1718
	Sec. 40, ...	1719
	Sec. 41, (Amended)	1720
1901, July 2, P. L. 607	Sec. 1, (Amended)	1765
	Sec. 2, ...	1766
	Sec. 3, ...	1767
1901, July 2, P. L. 610	Sec. 1, ...	1597
	Sec. 2, ...	1598
	Sec. 3, ...	1599
	Sec. 4, ...	1600
	Sec. 5, ...	1601
	Sec. 6, ...	1602
	Sec. 7, ...	1603
1903, March 18, P. L. 28	Sec. 1, ...	1740
1903, March 26, P. L. 63	Sec. 1, ...	1720
1903, March 27, P. L. 83	Sec. 1, ...	1741
	Sec. 2, ...	1742
1903, April 3, P. L. 138	Sec. 1, ...	1533
1903, April 3, P. L. 152	Sec. 1, ...	1705
1903, April 23, P. L. 284	Sec. 1, ...	1535
	Sec. 2, ...	1536
	Sec. 3, ...	1537
1903, April 27, P. L. 323	Sec. 1, ...	1912

1905, March 24, P. L. 50	Sec. 1, ...	1885
1905, March 29, P. L. 69	Sec. 1	1728
1905, March 30, P. L. 81	Sec. 1, ...	1915
1905, April 8, P. L. 118	Sec. 1, ...	1604
	Sec. 2, ...	1605
1905, April 14, P. L. 156	Sec. 1, ...	2011
1905, April 14, P. L. 162	Sec. 1, ...	1961
	Sec. 2, ...	1962
1905, April 17, P. L. 183	Sec. 1, (Amended)	2105
	Sec. 2, ...	2106
	Sec. 3, (Amended)	2107
	Sec. 4, ...	2108
	Sec. 5, ...	2109
	Sec. 6, (Amended)	2110
1905, April 20, P. L. 227	Sec. 1, ...	2099
1905, April 20, P. L. 236	Sec. 1, ...	1541
	Sec. 2, ...	1538
1905, April 20, P. L. 237	Sec. 1, (Amended)	1818
1905, April 22, P. L. 296	Sec. 1, ...	2124
	Sec. 2, ...	2125
	Sec. 3, ...	2126
	Sec. 4, ...	2127
1907, April 4, P. L. 40	Sec. 1, (Amended)	1676
1907, April 25, P. L. 104	Sec. 1, ...	1818
1907, May 28, P. L. 270	Sec. 1, ...	2009
	Sec. 2, ...	2010
1907, June 1, P. L. 372	Sec. 1, ...	1796
1907, June 7, P. L. 444	Sec. 1, ...	1786
	Sec. 2, ...	1787
	Sec. 3, ...	1788
	Sec. 4, ...	1789
	Sec. 5, ...	1790
1907, June 12, P. L. 523	Sec. 1, ...	1883
1909, March 25, P. L. 78	Sec. 1, ...	1676
1909, April 23, P. L. 141	Sec. 1, ...	2144
	Sec. 2, ...	2145
1909, April 23, P. L. 171	Sec. 1, ...	1856
	Sec. 2, ...	1857
1909, April 27, P. L. 201	Sec. 1, ...	1829
	Sec. 2, ...	1830
1909, April 29, P. L. 275	Sec. 2, (Amended)	1547
	Sec. 3, ...	1548
	Sec. 4, ...	1549
1909, May 1, P. L. 307	Sec. 1, ...	2093
	Sec. 2, ...	2094
	Sec. 3, ...	2095
	Sec. 4, ...	2096
	Sec. 5, ...	2097
1909, May 1, P. L. 317	Sec. 1, ...	1646
1909, May 6, P. L. 452	Sec. 1, ...	1696
	Sec. 2, ...	1697
1909, May 8, P. L. 494	Sec. 1, ...	1884
1909, May 11, P. L. 516	Sec. 1, ...	2100
	Sec. 2, ...	2101

	Section
1909, May 11, P. L. 516	Sec. 3, ... 2102
	Sec. 4, ... 2103
	Sec. 5, ... 2104
1909, May 13, P. L. 527	Sec. 1, ... 1802
1909, July 8, P. L. 761	Sec. 1, ... 1909
	Sec. 2, ... 1910
1911, March 30, P. L. 30	Sec. 1, ... 1791
	Sec. 2, ... 1792
1911, March 30, P. L. 38	Sec. 1, ... 1581
	Sec. 2, ... 1582
1911, April 11, P. L. 95	Sec. 1, ... 1726
1911, May 11, P. L. 236	Sec. 1, ... 1666
1911, May 11, P. L. 244	Sec. 1, (Amended) 1803
	Sec. 19, ... 1804
	Sec. 20, (Amended) 1805
1911, May 18, P. L. 300	Sec. 207, (Amended) 1532
1911, May 31, P. L. 468	Sec. 5, ... 1820
	Sec. 6, ... 1821
	Sec. 12, ... 1822
	Sec. 21, ... 1831
	Sec. 22, ... 1832
	Sec. 23, ... 1833
	Sec. 24, ... 1834
	Sec. 25, ... 1835
	Sec. 26, ... 1836
	Sec. 27, (Amended) 1837
	Sec. 28, ... 1838
	Sec. 29, ... 1839
	Sec. 30, ... 1840
	Sec. 31, ... 1841
	Sec. 32, ... 1842
	Sec. 33, ... 1843
	Sec. 34, ... 1844
	Sec. 35, ... 1845
	Sec. 36, ... 1846
1911, June 7, P. L. 677	Sec. 1, ... 2146
1911, June 9, P. L. 733	Sec. 1, ... 1926
	Sec. 2, ... 1927
	Sec. 3, ... 1928
	Sec. 4, ... 1929
	Sec. 5, ... 1930
1911, June 9, P. L. 742	Sec. 1, ... 1765
1911, June 10, P. L. 867	Sec. 1, ... 1919
1911, June 15, P. L. 970	Sec. 1, ... 1911
1911, June 20, P. L. 1076	Sec. 1, ... 1688
1911, June 21, P. L. 1111	Sec. 1, ... 2120
	Sec. 2, ... 2121
	Sec. 3, ... 2122
1913, May 1, P. L. 153	Sec. 1, ... 1858
	Sec. 2, ... 1859
1913, May 20, P. L. 264	Sec. 1, ... 1539
	Sec. 2, ... 1542

	Sec. 3	1540
1913, May 21, P. L. 285	Sec. 1, (Amended)	1501
1913, May 28, P. L. 377	Preamble	1648
	Sec. 1	1640
1913, June 5, P. L. 405	Sec. 3	1606
1913, June 5, P. L. 417	Sec. 1, (Amended)	1826
	Sec. 2	1827
	Sec. 3	1828
1913, June 5, P. L. 419	Sec. 1	2007
	Sec. 2	2008
1913, June 12, P. L. 471	Sec. 1	2054
	Sec. 2	2055
	Sec. 3	2056
	Sec. 4	2057
	Sec. 5	2058
	Sec. 6, (Amended)	2059
	Sec. 7	2060
	Sec. 8	2061
	Sec. 9	2062
	Sec. 10	2063
	Sec. 11	2064
	Sec. 12	2065
	Sec. 13	2066
1913, June 17, P. L. 507	Sec. 17, (Amended)	1664
	Sec. 18, (Amended)	1665
1913, June 25, P. L. 551	Sec. 1	2113
	Sec. 2	2114
	Sec. 3	2115
	Sec. 4	2116
1913, June 27, P. L. 633	Sec. 1	1795
1913, July 21, P. L. 865	Sec. 1	1932
	Sec. 2	1934
1913, July 26, P. L. 1371	Sec. 1	2105
1915, March 26, P. L. 11	Sec. 1	1557
	Sec. 2	1558
	Sec. 3	1559
1915, April 14, P. L. 114	Sec. 1	2059
1915, April 28, P. L. 195	Sec. 1	1645
1915, May 5, P. L. 258	Sec. 1	1556
1915, May 14, P. L. 483	Sec. 12, (Amended)	2123
1915, May 14, P. L. 489	Sec. 2	1547
1915, May 28, P. L. 599	Sec. 1	1679, 1680, 1681, 1682
	Sec. 2	1684
	Sec. 3	1685
	Sec. 4	1691
	Sec. 5	1692
	Sec. 6	1699
	Sec. 7	1701
	Sec. 8	1709
	Sec. 9	1711
	Sec. 10	1716

1915, June 1, P. L. 660	Sec. 1, ...	1591
1915, June 4, P. L. 812	Sec. 1, ...	1860
	Sec. 2, ...	1861
	Sec. 3, ...	1862
	Sec. 4, ...	1863
	Sec. 5, ...	1864
	Sec. 6, ...	1865
	Sec. 7, ...	1866
	Sec. 8, ...	1867
	Sec. 9, ...	1868
	Sec. 10, ...	1869
1915, June 4, P. L. 815	Sec. 1, ...	2050
	Sec. 2, ...	2051
1915, June 5, P. L. 846	Sec. 1, ...	1655
	Sec. 2, ...	1656
	Sec. 3, ...	1650
	Sec. 4, ...	1651, 1657
	Sec. 5, ...	1658
1915, June 8, P. L. 926	Sec. 15, ...	2112
1915, June 15, P. L. 985	Sec. 1, ...	1750
1917, March 20, P. L. 6	Sec. 1, ...	1826
1917, April 5, P. L. 47	Sec. 1, ...	1508
	Sec. 2, ...	1509
	Sec. 3, ...	1510
	Sec. 4, ...	1511
	Sec. 5, ...	1512
	Sec. 6, ...	1513
1917, May 3, P. L. 149	Sec. 1, ...	2123
1917, May 10, P. L. 158	Sec. 1, ...	2002
	Sec. 2, ...	2003
1917, May 17, P. L. 221	Sec. 1, ...	1554
	Sec. 2, ...	1555
1917, May 17, P. L. 235	Sec. 1, (amended)	1823
	Sec. 2, ...	1824
	Sec. 3, ...	1825
1917, May 24, P. L. 270	Sec. 1, ...	1575
	Sec. 2, ...	1576
1917, May 24, P. L. 276	Sec. 1, ...	1891
	Sec. 2, (Amended)	1892
	Sec. 3, ...	1893
	Sec. 4, (Amended)	1894
	Sec. 5, ...	1895
	Sec. 6, ...	1896
	Sec. 7, ...	1897
	Sec. 8, ...	1898
	Sec. 9, ...	1899
	Sec. 10, ...	1900
	Sec. 11, ...	1901
	Sec. 12, ...	1902
	Sec. 13, ...	1903
	Sec. 14, ...	1904

	Sec. 15, (Amended)	1905
	Sec. 16, ...	1906
	Sec. 17, ...	1907
	Sec. 18, ...	1908
1917, May 24, P. L. 291	Sec. 1, ...	1811
	Sec. 2, ...	1812
	Sec. 3, ...	1813
	Sec. 4, ...	1814
1917, May 24, P. L. 292	Sec. 1, ...	2117
	Sec. 2, ...	2118
	Sec. 3, ...	2119
1917, June 7, P. L. 600	Sec. 1, ...	1521
	Sec. 2, ...	1522
	Sec. 3, ...	1523
1917, June 23, P. L. 643	Sec. 2, ...	2107
	Sec. 3, ...	2110
1917, June 23, P. L. 645	Sec. 1, ...	1577
1917, June 28, P. L. 646	Sec. 1, ...	1923
	Sec. 2, ...	1924
1917, July 6, P. L. 747	Sec. 1, ...	1663
1917, July 6, P. L. 752	Sec. 1, ...	1997
	Sec. 2, ...	1998
1917, July 18, P. L. 1062	Sec. 1, ...	1517
	Sec. 2, ...	1518
	Sec. 3, ...	1519
	Sec. 4, ...	1520
1917, July 18, P. L. 1074	Sec. 1, ...	1922
1917, July 18, P. L. 1083	Sec. 1, ...	1999
	Sec. 2, ...	2000
	Sec. 3, ...	2001
1917, July 19, P. L. 1115	Sec. 1, ...	2004
1917, July 20, P. L. 1143	Sec. 1, ...	2012
	Sec. 2, ...	2013
	Sec. 3, ...	2014
	Sec. 4, ...	2015
	Sec. 5, ...	2016
	Sec. 6, ...	2017
	Sec. 7, ...	2018
	Sec. 8, ...	2019
	Sec. 9, ...	2020
	Sec. 10, ...	2021
	Sec. 11, ...	2022
	Sec. 12, ...	2023
	Sec. 13, ...	2024
	Sec. 14, ...	2025
	Sec. 15, ...	2026
	Sec. 16, ...	2027
	Sec. 17, ...	2028
	Sec. 18, ...	2029
	Sec. 19, ...	2030
	Sec. 20, ...	2031
	Sec. 21, ...	2032

	Section
1917, July 20, P. L. 1148.	Sec. 22, ... 2033
	Sec. 23, ... 2034
	Sec. 24, ... 2035
	Sec. 25, ... 2036
	Sec. 26, ... 2037
	Sec. 27, ... 2038
	Sec. 28, ... 2039
	Sec. 29, ... 2040
1919, April 4, P. L. 30	Sec. 1, ... 1689
1919, April 4, P. L. 35	Sec. 1, (Amended) 1543
1919, April 4, P. L. 45	Sec. 1, ... 2147
	Sec. 2, ... 2148
	Sec. 3, ... 2149
1919, May 1, P. L. 93	Sec. 1, ... 1797
	Sec. 2, ... 1798
	Sec. 3, ... 1799
	Sec. 4, ... 1800
	Sec. 5, ... 1801
1919, May 1, P. L. 103	Sec. 1, ... 1990
	Sec. 2, ... 1991
	Sec. 3, ... 1992
	Sec. 4, ... 1993
	Sec. 5, ... 1994
	Sec. 6, ... 1995
	Sec. 7, ... 1996
1919, May 2, P. L. 106	Sec. 2, ... 1805
1919, May 8, P. L. 130	Sec. 1, ... 1503
1919, May 16, P. L. 180	Sec. 1, ... 1721
	Sec. 2, ... 1722
	Sec. 3, ... 1723
	Sec. 4, ... 1724
	Sec. 5, ... 1725
1919, May 16, P. L. 199	Sec. 1, ... 1819
1919, June 4, P. L. 374	Sec. 1, ... 2048
	Sec. 2, ... 2049
1919, June 5, P. L. 395	Sec. 1, ... 1823
1919, June 7, P. L. 414	Sec. 1, ... 1892
	Sec. 2, ... 1894
	Sec. 3, ... 1905
1919, June 12, P. L. 450	Sec. 1, (Amended) 1806, 1849
1919, June 12, P. L. 451	Sec. 1, ... 1952
	Sec. 2, ... 1953
	Sec. 3, ... 1954
	Sec. 4, ... 1955
	Sec. 5, ... 1956
	Sec. 6, ... 1957
	Sec. 7, ... 1958
1919, June 20, P. L. 509	Sec. 1, ... 1733
1919, June 20, P. L. 513	Sec. 1, ... 1808
	Sec. 2, ... 1809
	Sec. 3, ... 1810

1919, June 20, P. L. 517	Sec. 1, ...	1532
1919, June 30, P. L. 678	Sec. 9, (Amended)	1935, 2111
	Sec. 19, (Amended)	1936
	Sec. 20, (Amended)	1937
	Sec. 21, ...	1938
	Sec. 22, ...	1939
	Sec. 23, (Amended)	1940
	Sec. 24, (Amended)	1941
	Sec. 25, ...	1942
	Sec. 26, (Amended)	1943
	Sec. 27, ...	1944
	Sec. 28, (Amended)	1945
	Sec. 29, (Amended)	1946
	Sec. 30, ...	1947
	Sec. 31, ...	1948
	Sec. 32, ...	1949
	Sec. 33, (Amended)	1950
	Sec. 35, ...	1951
1919, July 7, P. L. 732	Sec. 1, ...	1925
1919, July 8, P. L. 738	Sec. 1, ...	1803
1919, July 8, P. L. 770	Sec. 1, ...	1870
	Sec. 2, ...	1871
	Sec. 3, ...	1872
	Sec. 4, (Amended)	1873
	Sec. 4, ...	1874
	Sec. 5, (Amended)	1875
	Sec. 6, ...	1876
	Sec. 7, ...	1877
	Sec. 8, ...	1878
	Sec. 9, ...	1879
	Sec. 10, (Amended)	1880
	Sec. 11, ...	1881
	Sec. 12, ...	1882
1919, July 8, P. L. 784	Sec. 1, (Amended)	2041
	Sec. 2, (Amended)	2042
	Sec. 3, (Amended)	2043
	Sec. 4, ...	2044
	Sec. 5, (Amended)	2045
	Sec. 6, (Amended)	2046
	Sec. 7, (Amended)	2047
1919, July 8, P. L. 786	Sec. 1, ...	1677
1919, July 15, P. L. 955	Sec. 1, ...	1664
1919, July 15, P. L. 958	Sec. 1, ...	1665
1919, July 15, P. L. 964	Sec. 1, ...	1674
1919, July 17, P. L. 1010	Sec. 1, ...	2067
	Sec. 2, (Amended)	2068
	Sec. 3, ...	2069
	Sec. 4, (Amended)	2070
	Sec. 5, ...	2071
	Sec. 6, ...	2072
	Sec. 7, ...	2073
	Sec. 8, ...	2074

	Section
1919, July 17, P. L. 1010.	Sec. 9, ... 2075
	Sec. 10, ... 2076
	Sec. 11, ... 2077
	Sec. 12, ... 2078
	Sec. 13, ... 2079
	Sec. 14, ... 2080
	Sec. 15, ... 2081
	Sec. 16, ... 2082
	Sec. 17, ... 2083
	Sec. 18, ... 2084
	Sec. 19, ... 2085
	Sec. 20, ... 2086
	Sec. 21, ... 2087
	Sec. 22, ... 2088
	Sec. 23, ... 2089
	Sec. 24, ... 2090
	Sec. 25, ... 2091
	Sec. 26, ... 2092
1921, March 10, P. L. 23	Sec. 1, ... 1837
1921, March 10, P. L. 26	Sec. 1, ... 1806, 1849
1921, April 6, P. L. 111	Sec. 1, ... 1746
1921, April 12, P. L. 124	Sec. 1, ... 1988
1921, April 21, P. L. 207	Sec. 1, ... 2068
	Sec. 2, ... 2070
1921, April 26, P. L. 286	Sec. 1, ... 1543
1921, April 26, P. L. 315	Sec. 1, ... 1675
1921, May 5, P. L. 397	Sec. 1, ... 1524
	Sec. 2, ... 1525
	Sec. 3, ... 1526
	Sec. 4, ... 1527
	Sec. 5, ... 1528
	Sec. 6, ... 1529
1921, May 10, P. L. 428	Sec. 1, ... 1743
1921, May 10, P. L. 441	Sec. 1, ... 1550
1921, May 11, P. L. 484	Sec. 1, ... 2041
	Sec. 2, ... 2042
	Sec. 3, ... 2043
	Sec. 4, ... 2045
	Sec. 5, ... 2046
	Sec. 6, ... 2047
1921, May 11, P. L. 519	Sec. 1, ... 1847
	Sec. 2, ... 1848
1921, May 12, P. L. 544	Sec. 1, ... 2052
	Sec. 2, ... 2053
1921, May 16, P. L. 582	Sec. 5, ... 1935, 2111
	Sec. 8, ... 1936
	Sec. 9, ... 1937
	Sec. 10, ... 1940
	Sec. 11, ... 1941
	Sec. 12, ... 1943
	Sec. 13, ... 1945
	Sec. 14, ... 1946

1921, May 16, P. L. 635, No. 271	Sec. 15, ...	1950
1921, May 17, P. L. 826, No. 287	Sec. 1, ...	1729
	Sec. 1, ...	1873
	Sec. 2, ...	1875
	Sec. 3, ...	1880
1921, May 17, P. L. 908, No. 318	Sec. 1, ...	1850
	Sec. 2, ...	1851
1921, May 24, P. L. 1089, No. 403.	Sec. 1, ...	1607
	Sec. 2, ...	1608
	Sec. 3, ...	1609
	Sec. 4, ...	1610
	Sec. 5, ...	1611
	Sec. 6, ...	1612
	Sec. 7, ...	1613
	Sec. 8, ...	1614
	Sec. 9, ...	1615
	Sec. 10, ...	1616
	Sec. 11, ...	1617
	Sec. 12, ...	1618
	Sec. 13, ...	1619
	Sec. 14, ...	1620
	Sec. 15, ...	1621
	Sec. 16, ...	1622
	Sec. 17, ...	1623
	Sec. 18, ...	1624
	Sec. 19, ...	1625
	Sec. 20, ...	1626
	Sec. 21, ...	1627
	Sec. 22, ...	1628
	Sec. 23, ...	1629
	Sec. 24, ...	1630
	Sec. 25, ...	1631
	Sec. 26, ...	1632
	Sec. 27, ...	1633
	Sec. 28, ...	1634
	Sec. 29, ...	1635
	Sec. 30, ...	1636
	Sec. 31, ...	1637
	Sec. 32, ...	1638
1921, May 25, P. L. 1123	Sec. 1, ...	585
	Sec. 2, ...	587

TABLE OF CASES.

	Section
Abington Township Road, 190 Pa., 118, ...	1739
Ackerly et al. v. Lackawanna County, 1 Lack. L. N. 14, ...	1731, 1759
Adams v Swendon Township, 9 D. R. 450, ...	358
Adamstown Borough v. Hartman, 36 Lanc. L. R., 73; s. c. 10 M. L. R. 174, 33 York, 48, 67 P. L. J. 545, ...	1688, 1714
Administration of Oaths, Opinion by William H. Keller, Dep. Atty. Gen., 3 Dep. Rep. 463, ...	1951
Albany Township Road, 2 Berks 98, ...	1735
Alexander v. City of Philadelphia, et al. 17 D. R. 799, ...	1645, 1652
Aliquippa Borough v. Hall, 21 D. R. 774; s. c. 4 M. L. R. 42, ...	1514
Allegheny Township Road, 19 Pa. C. C., 30, ...	1748
Allen v. Commonwealth, 77 Super. Ct. 244, ...	240
Allen Township Road, 19 D. R. 356; s. c. 12 North. C. R. 152, 23 York 160, ..	1734
Allentown v. Ackerman, 37 Super. Ct. 363, affirming 2 Leh. 236, ..1690, 1696,	1699
Allentown v. Roth, 231 Pa. 140, affirming 4 Leh. 136, ...	1676
Allentown Road, 5 Wharton 442, ...	1777
Allentown to use of Barber Asphalt Paving Company v. Light, 15 D. R 619, ...	1686, 1687, 1690
Alley in West Chester, 1 Pa. C. C. 649, ...	1739
Alliance Borough v. Schwartz, 53 Super. Ct. 448, reversing 13 North. C. R. 314; s. c. 4 M. L. R. 97, ...	1714
Altland v. Swine ex rel. McSparran, 13 Pa. C. C. 383; s. c. 10 Lanc. L. R. 241, ...	1982
Andrus v. Shippen Township, 36 Super. Ct. 22, reversing 34 Pa. C. C. 312, 6 Just. L. R. 103, ...	2136
Apollo Borough v. Clepper, 44 Super. Ct. 396, ...	1706
Appeal of Harrison Township, 20 Pa. C. C. 54, s. c. 45 P. L. J. 196, ...	2136
Appointment of Special Policeman for Second Class Townships, 22 Lack. J. 173, ...	355
Appointment of Viewers, 21 Luz. L. R. 201, ...	486
Armstrong v. Wolcott, 26 D. R. 899; s. c. 65 P. L. J. 389, ...	1688
Arrott Street, 18 W. N. C. 121, ...	1738
Augusta Township Road, 17 Pa. 71, ...	1778
Avalon Borough v. Ardery, 29 D. R. 178; s. c. 67 P. L. J. 307, ...	1688
Bair v. Diller, 18 Pa. 521; s. c. 14 Lanc. L. R. 6, ...	1971, 1972
Ball Street No. 2, 27 Pa. C. C. 600, ...	1757
Barnesboro v. Speice, 40 Super. Ct. 609, ...	1676
Barr v. Philadelphia, 191 Pa. 438, ...	1646
Beach Creek Township Road, 34 Pa. C. C. 570; s. c. 17 D. R. 581, ...	1740
Beaver County Commissioners, 14 D. R. 491, ...	2084
Beaver Township Road, 28 D. R. 989, ...	1739
Bedford Bridge, 72 Pa. 42, ...	1883
Bell v. Waynesboro, 195 Pa. 299, ...	1643
Bell Tel. Co. v. Hazleton, 67 Super. Ct. 264, ...	2107
Bellefonte Borough v. Whitehead et al. 64 P. L. J. 237, ...	1690
Bellevernon Borough Road, 15 W. N. C. 232, ...	1739
Benedict v. Fulton Township et al. 37 Lanc. L. R. 367; s. c. 20 D. R. 433, 230,	1875
Bennet v. Hunt, 148 Pa. 257, ...	1561
Bensinger Township Road, 115 Pa. 436, ...	1741
Benton Township Road, 41 Super. Ct. 57, ...	1741

	Section
Berwick Borough v. Sponsler et al. 11 M. L. R. 238; s. c. 20 Luz. L. R. 399, ...	1699
Bethlehem Inter County Bridge, 14 North. C. R. 73, ...	1883
Bethlehem Inter County Road, 23 D. R. 818; s. c. 14 North. C. R. 73, ...	1884
Big Run Road, 47 Super. Ct. 166, ...	1727
Bigger v. Scranton, 30 Super. Ct. 503, ...	1593
Bilger v. Spring Township, 20 Pa. C. C. 670, ...	1988
Bittner v. City of York, 34 York, 173, ...	2123
Bittner et ux. v. City of York, 30 D. R. 956, ...	2123
Black v. Duquesne Borough School, 239 Pa. 96, ...	1561
Blakely Road, 8 Pa. C. C. 498, ...	1784
Blamere v. Borough of Parsons, et al., 17 Luz. L. R. 417, s. c. 7 M. L. R. 175, ...	1645, 1647
Bloomsburg Town Election Case, 18, Pa. C. C. 449; s. c. 4 D. R. 671, ...	1646
Boice v. Curtis, 2 Luz. 203, ...	1982
Borough of Hanover v. Hanover Sewing Company, 251 Pa. 95, reversing 28 York, 77, ...	1932
Borough of Hanover's Petition, 26 York 153, No. 21, 27 York 133, 5 M. L. R. 204, ...	1932
Bowen v. County of Northumberland, 1 Northum. L. N. 24, ...	1744
Boyer's Road, 37 Pa. 257, ...	1739, 1768, 1769
Bradford County v. Beardsley, 60 Super. Ct. 478, ...	1594
Brandt v. Elizabethtown Borough School District, 26 Lane. L. R. 249, ...	1646
Bridge in East Nantmeal, 21 Chester 391, ...	1738
Bridge in Rapho and West Hempfield Townships, 1 Lane. L. R. 27, ...	1883
Bridge on Bedford and Stoystown Turnpike Road, 14 Pa. C. C. 296, ...	1883
Bridgeport and New Cumberland Turnpike Road, 171 Pa. 312, ...	1785
Briel et al. v. Karthaus Township School District, 22 D. R. 511, ...	1640
Broad Street Sewickley M. E. Church's Appeal, 165 Pa. 475, ...	1685
Brode v. Philadelphia, 230 Pa. 434, affirming 18 D. R. 899, ...	1662
Brooke et al. v. City of Philadelphia, et al. 162 Pa. 123, ...	1644
Brooklyn Street, 118 Pa. 640, ...	1738
Brown et al. v. City of Corry et al. 4 D. R. 645, ...	1644
Brown's Appeal, 111 Pa. 72, ...	1645
Bruce, et al. v. Pittsburgh et al. 166 Pa. 152, ...	1645, 1647
Buck v. Commonwealth, 90 Pa. 110, ...	1580
Bucks County Road, 3 Wharton 105, ...	1745
Bullitt v. Philadelphia, 230 Pa. 544, affirming 19 D. R. 1083, ...	1646
Bureau of Mun. Opinion of Emerson Collins, Dep. Atty. Gen. 4 Dep. Rep. 767, ...	2149
Bushkill Township Road, 12 North. C. R. 118, ...	1734, 1735, 1740
Caldwell v. Moore, 11 Pa. 58, ...	1587
Cambria Street, 75 Pa. 357, ...	1734
Cameron Township Auditor's Report, 25 D. R. 277, ...	2136
Canaan Township Overseers v. Covington Township Overseers, 54 Super. Ct. 25, ...	2096
Carlisle v. Welsh, et al. 74 Super. Ct. 255, ...	1685
Carlisle Borough v. Eppley, No. 1, 9 M. L. R. 220; s. c. 27 D. R. 189, ...	2059
Carpenter v. Wolf, 37 Lane. L. R. 141; s. c. 34 York 9, affirmed in 76 Super. Ct. 363, ...	1962
Carriek v. Canevin, 243 Pa. 283, ...	1685, 1696
Carriek v. Canevin, 55 Super. Ct. 233, ...	1696
Cassville Road, 21 Pa. C. C. 212, ...	1779

	Section
Catharine Township Road, 76 Pa. 189, ...	1735
Central R. R. of New Jersey's Appeal, 102 Pa. 38, ...	1738
Charlotte Street, 23 Pa., 286, ...	1758
Chartiers Creek Bridge, 37 Super. Ct. 281, ...	1885
Chartiers Township Road, 47 P. L. J. 268, ...	1728
Cheltenham Township Road, 11 Pa. C. C. 671, ...	1757
Cheltenham Township Road, 140 Pa. 136, ...	1732
Cherry Street, Norristown, 8 Philadelphia 501, ...	1745
Chester City v. Lane, 24 Super. Ct. 359, 367, 368, 369, ...	1686, 1698
Chester City v. Prendergast, 31 York 5; s. e. 14 Del. 226, ...	1685
Chestnut Street, 8 Pa. C. C. 55; s. e. 20 Phila. 364, ...	1732
Christley v. Butler County, 37 Super. Ct. 32, ...	1605
Clapper v. Greensburg, 48 P. L. J. 112, ...	2136
Clarion County v. Clarion Township, 222 Pa. 350, ...	1818
Clarion Township and Clarion Borough Road, 35 Pa. C. C. 17, ...	1728
Clark v. Allegheny County, 260 Pa. 199, ...	1802, 1803
Clark v. Birmingham and Pittsburgh Bridge Company, 41 Pa., 147, ...	1920
Clark v. Reardon, 37 Lane. L. R. 503; s. e. 69 P. L. J. 626, ...	1942
Claysville School District v. Worrell, 37 Super. Ct. 10, ...	1588
Clinton County v. Harrisburg Trust Company, 39 Pa. C. C. 498; s. e. 21 D. R. 760, ...	1711
Clowe's Road, 2 Grant 129, ...	1745
Cochranton Borough v. Cochranton Telephone Company, 41 Super. Ct. 146, ..	2105
Cogan House Township Road, 7 W. N. C. 257, s. e. 8 Luz. 211, ...	1738
Collins Township Road, 36 Pa. 85, ...	1741
Colored Children's Home v. Cambria County Poor District, 72 Super. Ct. 106, ...	1662
Commonwealth v. A Boar Pig, 2 Chester Co. 575, ...	1982
Commonwealth v. A Hog, 4 Pa. C. C. 76, ...	1982
Commonwealth v. Adsit et al. 68 P. L. J. 651; s. e. 49 Pa. C. C. 562, 35 York 88, ...	240
Commonwealth v. Allen, 70 Pa. 465, ...	2136
Commonwealth v. Ambler, No. 1, 30 D. R. 437, ...	2131
Commonwealth v. Bamberger, No. 1, 33 Lane. L. R. 65; s. e. 25 D. R. 652, ..	2139
Commonwealth v. Barge, 11 Super. Ct. 164, ...	2134
Commonwealth v. Barker, 211 Pa. 610, ...	1674
Commonwealth v. Becker, 19 Luz. 23; s. e. 34 Lane. L. R. 66, ...	1936, 1947
Commonwealth v. Bloom, 30 D. R. 648, ...	1941
Commonwealth v. Bowman, 218 Pa. 330, ...	1883
Commonwealth v. Bretz, 28 D. R. 918, 1919 Dauphin 29, 67 P. L. J. 153, ...	2143
Commonwealth v. Buzard, 27 D. R. 21; s. e. 45 Pa. C. C. 396, ...	1950
Commonwealth v. Carson, 21 Super. Ct. 48, ...	2133
Commonwealth v. Centre County Commissioners, 42 Pa. C. C. 101, ...	1883
Commonwealth v. Chadman, 11 D. R. 430; s. e. 19 Lane. L. R. 117, ...	2067
Commonwealth v. Christian, 9 Phila. 556, ...	2136
Commonwealth v. Clevestine, 66 Super. Ct. 125, ...	2143
Commonwealth v. Clime, 26 D. R. 663; s. e. 34 Lane. L. R. 85, ...	1936, 1950
Commonwealth ex rel. v. Cloud, 19 D. R. 299; s. e. 2 M. L. R. 3, 36 Pa. C. C. 190, ...	2136
Commonwealth v. Collins, 18 D. R. 893, ...	2136
Commonwealth v. Commissioners of Bedford County, 6 Super. Ct. 211, ...	366
Commonwealth v. County Commissioners, 35 Luz. 319, ...	39

	Section
Commonwealth v. Cutler et al. 50 Pa. C. C. 610, ...	2070
Commonwealth v. Davidson, 21 D. R. 885, ...	1936
Commonwealth v. Davies, 43 Pa. C. C. 536, s. c. 6 Leh. 338, ...	1950
Commonwealth v. Davis, 44 Pa. C. C. 562; s. c. 64 P. L. J. 692, 33 Lane. L. R. 388, 14 Del. 171, ...	1950
Commonwealth v. DeCamp, 177 Pa. 112; s. c. 39 W. N. C. 69, ...	2136
Commonwealth v. Dimegilo, 25 D. R. 830; s. c. 44 Pa. C. C. 34, 30 York 15, 13 Del. 437, ...	1940, 1950
Commonwealth v. Edwards, 24 D. R. 729; s. c. 13 Del. 28, ...	1531
Commonwealth v. Evans, 59 Super. Ct. 607 affirming 31 Lane. L. R. 401, ...	1533
Commonwealth v. Farrell et al. 17 Pa. C. C. 263, ...	1563
Commonwealth v. Flecker, 17 Pa. C. C. 671; s. c. 8 Kulp 225, ...	2139
Commonwealth v. Floyd, 21 Luz. 298, ...	1554
Commonwealth v. Ford, 5 Pa. 67, ...	1530
Commonwealth v. Fourteen Hogs, 10 S. & R. 393, ...	1982
Commonwealth v. Galbo, 30 D. R. 614, ...	1942
Commonwealth v. Godshalk, 76 Super. Ct. 500, ...	1936
Commonwealth v. Graham, 50 Pa. C. C. 402, ..	231
Commonwealth v. Greenwood Township Supervisors, 13 M. L. R. 39; s. c. 30 D. R. 536, ...	240
Commonwealth v. Gregory, 6 Luz. L. R. 127, ...	1545
Commonwealth v. Hauser, 19 Luz. 387, ...	2136
Commonwealth v. Hilibish, 12 Pa. C. C. 25, ...	2136
Commonwealth v. Hottenstein, 2 Woodw. 477, ...	2135
Commonwealth v. House, 8 Super. Ct. 92, ...	2133
Commonwealth v. Jones, 14 D. R. 350; s. c. 3 Just. L. R. 128; 5 Lack. J. 328, ..	1514
Commonwealth v. Koons, 1 Kulp 134, s. c. 9 Luz. 171, ...	2135
Commonwealth v. Krickbaum, 199 Pa. 351, ...	2136
Commonwealth v. Krell, 13 M. L. R. 1, ...	1937
Commonwealth v. Larden, 18 D. R. 716; s. c. 35 Pa. C. C. 631, ...	2136
Commonwealth v. Levy, 30 D. R. 894; s. c. 1 Somer. 355, ...	1942, 1948
Commonwealth v. Levy, 12 M. L. R. 167; s. c. 34 York 145, ...	1948
Commonwealth v. McAvoy, 9 Kulp, 168, ...	2136
Commonwealth v. McCafferty, 20 D. R. 29; s. c. 11 Del. 270; 2 M. L. R. 14, ..	1514
Commonwealth v. McCorkle, 64 P. L. J. 356; s. c. 14 Del. 112, 30 York 24, 26 D. R. 135, ...	1531
Commonwealth v. McCormick, 36 Pa. C. C. 253; s. c. 18 D. R. 641, ...	1531
Commonwealth v. McCullough, 19 Super. Ct. 412, ...	2134
Commonwealth v. Mahan, 12 Super. Ct. 616, ...	1563, 1589, 2134
Commonwealth v. Marcer, 29 Leg. Int., 52, ...	2131
Commonwealth v. Matthews, 10 Luz. 110, ...	1514
Commonwealth v. Mentzer, 162 Pa., 846, affirming 10 Lane. L. R. 188, ...	2133
Commonwealth v. Miller, 13 D. R. 147; s. c. 2 Just. L. R. 12; 20 Lane. L. R. 285; 18 York 50; 5 Lack. J. 174, ...	2134
Commonwealth v. Monongahela Bridge Co. 29 P. L. J. 126, ...	1920
Commonwealth v. Murphy, et al., 7 Just. L. R. 31, ...	1514
Commonwealth v. Myton, 16 Lack. J., 234; s. c. 6 Leh. 246; 18 Dan. 393, 7 M. L. R. 27; 44 Pa. C. C. 329; 64 P. L. J. 427, ...	1936
Commonwealth v. Naylor, 8 Lack. L. N. 20, ...	2136
Commonwealth v. Newton Township, 29 D. R. 1042; s. c. 49 Pa. C. C. 441, ..	1820

	Section
Commonwealth v. Plymouth Township, 13 Super. Ct. 209, ...	1745
Commonwealth v. Quay, 7 D. R. 723, ...	2131
Commonwealth v. Raudenbush, 249 Pa. 86, ...	2136
Commonwealth v. Rieker, 35 Lanc. L. R. 74, ...	1936, 1950
Commonwealth v. Ritchey, et al. 50 Pa. C. C. 624, ...	240
Commonwealth v. Rogers, 59 Super. Ct. 265, ...	1765
Commonwealth v. Rupp, 9 Watts 114, ...	2131
Commonwealth v. Schering, 61 Super. Ct. 261, ...	2143
Commonwealth v. Schmitz, 18 D. R. 861; s. c. 56 P. L. J. 31, ...	1645
Commonwealth v. Scott, 7 Pa. C. C. 409, ...	1594
Commonwealth v. Shive, 28 York 113, ...	1950
Commonwealth v. Shoener, 212 Pa. 527; s. c. 216 Pa. 71, ...	2133
Commonwealth v. Shoener, 216 Pa. 71, affirming 30 Super. Ct. 321, ...	2133, 2143
Commonwealth v. Sidler, 67 Super. Ct. 1, affirming 12 Sch. 408; 2 Northum.	
L. J. 430, 3 Northum, L. J. 138, ...	2133 2134
Commonwealth v. Smith, 10 North. C. R. 340; s. c. 2 Leh. 143, ...	1674
Commonwealth v. Snider, 35 Lanc. L. R. 75, ...	1940
Commonwealth v. Straban Township, 45 Pa. C. C. 85; s. c. 19 Dau. 302, ...	1643
Commonwealth v. Sutton, 21 Lack. J. 100; 68 P. L. J. 300, ...	1943
Commonwealth v. Swab, 59 Super. Ct. 485, ...	2143
Commonwealth v. Swaney, et al. 270 Pa. 589, ...	194
Commonwealth v. Tannebaum, 69 P. L. J. 780; s. c. 30 D. R. 943, 50 Pa. C.	
C. 303, ...	1950
Commonwealth v. Tannebaum, 22 Lack. L. J. 42; s. c. 34 York 197, ...	1936, 1950
Commonwealth v. Township of Straban, 19 Dau. 302; s. c. 45 Pa. C. C. 85, ...	1652
Commonwealth v. Vollmer, 25 D. R. 1070; s. c. 65 P. L. J. 12; 7 M. L. R.	
212, 44 Pa. C. C. 462; 33 Lanc. L. R. 125, ...	1936
Commonwealth v. West, 19 D. R. 269, ...	1531
Commonwealth v. Wineman, 21 D. R. 911; s. c. 1 West 238; 4 M. L. R. 31, ...	2136
Commonwealth v. Witman, 217 Pa. 411, ...	2136
Commonwealth ex rel. v. Baker, 212 Pa. 232, ...	1883
Commonwealth ex rel. v. Layton, 59 P. L. J. 488, 489; s. c. 3 M. L. R. 74, ...	2136
Commonwealth ex rel. v. Northampton County Commissioners, 19 D. R. 201, ...	1889
Commonwealth ex rel. Saunders v. Upper Providence Township, 13 D. R. 736, ...	358
Commonwealth ex rel. v. Sword, 63 P. L. J. 145; s. c. 6 M. L. R. 201, ...	2136
Commonwealth ex rel. v. Supervisors of Swatara Township, 16 Pa. C. C.	
490, ...	1883, 1911
Commonwealth ex rel. v. R. K. Young, State Treasurer, 18 Dau. 507; s. c.	
14 Just. L. R. 90; 45 Pa. C. C. 334, ...	1843
Commonwealth ex rel. Brown v. Pfeil et al. 31 York 89; s. c. 13 Sch. 292;	
3 Northum. L. J. 167, ...	2136
Commonwealth ex rel. Gast v. Kelly, 255 Pa. 475, ...	2136
Commonwealth ex rel. Lyon v. Ripple, Mayor, 4 Kulp 59, ...	1645
Commonwealth ex rel. Metcalf v. Winn, 4 M. L. R. 146; s. c. 16 Luz. L. R.	
R. 275, ...	1561
Commonwealth ex rel. Shiner v. Commissioners of Northampton County, 5	
North. C. R. 23, ...	1889
Conestoga Bridge, 150 Pa. 541, ...	1883, 1887
Consolidated Tel. Companies of Penna. v. Easton, 16 D. R. 887; s. c. 11	
North. C. R. 1; 10 Del. 388, ...	2107
Cornplanter Township Road, (No. 1) 26 Super. Ct. 20, ...	1728

Cornplanter Township Road, (No. 2) 26 Super. Ct. 29, ...	1728
Correll v. Mt. Jewett Boro., 49 Super. Ct. 118, ...	1757
County of Lackawanna v. Duffy, 248 Pa. 575, ...	2132
Coxe's Case, 11 Pa. C. C. 639, ...	2136
Crafton Borough v. Richards, 17 D. R. 835; s. c. 55 P. L. J. 279, ...	1676
Crawford v. Borough of Clifton Heights, 8 Del. 313; s. c. 15 York 119, ...	2136
Creseent Township Road, 30 York 130, ...	1728
Crowley v. Hastings et al. 36 Mont. 34, ...	1962
Croyle Township Road, 37 Super. Ct., 57, ...	1745
Culp v. Commonwealth, 109 Pa. 363, affirming 16 Phila. 496, ...	2135, 2143
Cumru Township Road, 5 Berks 281, ...	1740
Dallas Borough Auditor's Report, 23 D. R. 1068, ...	341
Dare v. County Commissioners, 23 Pa. C. C. 646, ...	381
Davis v. Doylestown, 3 Pa. C. C. 573, ...	1643
Davis v. Schuylkill Co., 27 Pa. C. C. 177, ...	1514
Deems v. Borough of Washington, 12 M. L. R. 195, ...	2123
Del. & Atl. Telegraph and Telephone Company's Petition, 224 Pa. 55; affirming 37 Super. Ct. 151; affirming 10 Del. 340, ...	2109
Delaware County Appeal, 1 Super. Ct. 204, ...	1745
D. L. & W. R. R. Company v. Scranton City, 5 Pa. C. C. 437; s. c. 5 Kulp 67, ...	1645
Denison Township School District v. Shortz, et al., 2 Penny. 231, ...	1645
Derry Township Road, 11 Super. Ct. 232, ...	1735, 1739, 1745
De Turk v. Commonwealth, 129 Pa. 151, ...	1530
Dice v. Rumber, 47 Pa. C. C. 42, ...	1960
Dickinson Township Road, 23 Super. Ct. 34, ...	1768
Dormont Borough v. Mount Washington Street Railway Company, No. 1, 63 P. L. J. 556, ...	1684, 1714
Dormont Borough v. Mount Washington Street Railway Company, No. 2, and 3, 63 P. L. J. 557-558, ...	1714
Dormont Borough v. West Liberty Street Railway Company, 64 Super. Ct. 562, ...	2107
Dover Township Road, 12 York 26, ...	1745
Dover Township Road, 12 York 20, ...	1739, 1746
Dreese v. Freed, 42 Pa. C. C. 242, ...	381
Dreese et al. v. Beaver Township Supervisors, et al., 24 D. R. 586, s. c. 42 Pa. C. C. 242, ...	2136
Dunmore Township Road, 32 Pa. C. C. 105; s. c. 15 D. R. 625; 23 Lanc. L. R. 123, ...	1777, 1780
DuBois Cemetery Company v. Griffin, 165 Pa. 81, ...	1736
Duffs Private Road, 66 Pa. 459, ...	1758
Dugan v. Monongahela River Bridge Co., 27 Pa. 303, ...	1920
Dunbar Borough School District v. Kerwin, et al., 20 D. R. 404, ...	1583
Dunlevy, Trustee v. Bell, 61 P. L. J. 259, ...	1714
Dunmore Borough v. Burke et al., 26 D. R. 1057; s. c. 18 Lack. J., 113, ...	1697
Dunmore Borough v. Conrad, 76 Super Ct. 473, ...	1688
Dunmore Borough v. Knapp, 21 Lack. J. 381; s. c. 12 M. L. R. 146, ...	1690
Earl v. Ryan, 41 Super. Ct. 448, ...	1765
East Earl Township Road, 28 Lanc. L. R. 409, ...	1754, 1757
East Penn Township Road, 22 Pa. C. C. 453, ...	1734
East Pennsboro Township Road, 26 D. R. 920, ...	1758
East Union Township v. Comrey, 100 Pa. 362, ...	1753
East Whiteland Township v. Chester County, 235 Pa. 579, ...	1818
Egan v. Claysville Borough et al., 239 Pa. 259, ...	1646

Egypt Street, 2 Grant 454, ...	1736
Ehler v. School Directors of Lower Paxton Township, 24 Dau. 262, ...	1646
Eighteenth Street, 42 Pa. C. C. 253; s. c. 62 P. L. J. 265; 6 M. L. R. 50, ...	1685
Elliott v. Philadelphia, 229 Pa. 215, ...	1645, 1652
Erie City v. Willis, 26 Super. Ct. 459, ...	1690, 1706
Erie City's Appeal, 91 Pa. 398, ...	1640
Erie County v. Fox, Sheriff, 2 Erie 227, ...	2067
Everett v. Auchu, 66 Super. Ct. 443, ...	1936
Ewing's Mill Road, 32 Pa. 282, ...	1745
Farber v. Straup, 14 Just. L. R. 225, ...	1965
Farmer's Exemptions, 30 Pa. C. C. 590, ...	1597
Farrell Road, 35 Super. Ct. 86, ...	1765
Ferguson v. Moore, 5 Super. Ct. 349, ...	1588
Fermanagh Road, 1 Super. Ct. 534, ...	1745
Fifth Street, 22 Super. Ct. 214, ...	1749
Fifty Second Street, 11 Phila. 437, ...	1738
First National Bank of Bridgeville v. Pittsburgh Silica Company, 12 Just. L. R. 281, ...	1688
Fleming v. Ramsey, 46 Pa. 252, ...	1773
Fleming Mfg. Co. v. Hector Township, 35 Pa. C. C. 105; s. c. 6 Just. L. R. 283; 18 D. R. 730, ...	2127
Forks Township Road, 2 North. C. R. 135, ...	1732
Foster Township, 2 D. R. 415, ...	1560
Foster Township Road, 9 Luz. 114, ...	1734
Fowler v. Gable, 3 D. R. 23, ...	1646
Fox v. Crooks et al. 42 Pa. C. C. 561; s. c. 24 D. R. 226; 62 P. L. J. 544, ...	1971
Franciscus v. Reigart, 4 Watts 98, ...	1587
Frankford Township Road, 11 D. R. 78, ...	1728
Franklin Guards Association v. Boyer, 70 Super. Ct. 263, ...	1683
Franklin Township Road, 54 Super. Ct. 293, ...	1735
Franklin Township Road, 40 Pa. C. C. 484, ...	1728, 1734, 1739, 1758
Frankstown Township Road, 26 Pa. 472, ...	1726, 1739
Freemansburg Bridge, 19 Pa. C. C. 588, ...	1883, 1887
Freeport Borough v. Miller Estate, 34 Super. Ct. 395, ...	1690, 1714
Frick v. Patton, 2 Rawle 20, ...	1971
Frost v. Scott et al. 12 D. R. 339, ...	1765
Fulton Township Road, 26 Lane. L. R. 397, ...	1728
Fulton Township Road, 23 D. R. 678; s. c. 31 Lane. L. R. 134, 28 York 94, ...	485, 1738, 1749, 1795
Gaskins v. Montour County, 8 Luz. L. R. 270, ...	1646
Geesey et al. v. City of York, 25 D. R. 111; s. c. 28 York 203; affirmed in 254 Pa. 397, ...	1694, 1696
Gettysburg v. United Telephone Co. 19 D. R. 875, ...	2109
Gibbons v. Cochran, 32 Super. Ct. 185, ...	1683
Glenolden Borough v. Scott, 15 D. R. 705; s. c. 9 Del. 514; 10 North. C. R. 77, 19 York 75, ...	1690
Goepf v. Borough of Bethlehem, 28 Pa. 249, ...	1534
Graham et al. v. City of Lebanon, 240 Pa. 337, ...	1646
Greenwich Township Road, 11 Pa. 186, ...	1778
Greenwood Township Road, 27 Super. Ct. 549, ...	1732
Grim v. Herbst , 9 Just. L. R. 221; s. c. 24 York 99, ...	1962
Hamburg Borough v. Doering, 8 D. R. 131, ...	2136

	Section
Hampton Township Road, 72 Super. Ct. 484, ...	1728, 1758
Hanover Borough v. Hanover Sewing Company, 251 Pa. 95; reversing 28 York 77, ...	1932
Hanover Borough's Petition, 26 York 153, No. 2; 27 York 133; s. c. 5 M. L. R. 204, ...	1932
Hanover Township Road, 14 D. R. 778, ...	1735
Hanover Township Road, Vacation, 1 Leh. 52, ...	1778
Harple v. Rudy, 23 Lanc. L. R. 41, ...	1597
Harrisburg v. Dauphin Deposit Bank, 12 D. R. 207; s. c. 6 Dau. 4, ...	1646
Harrison Township's Appeal, 20 Pa. C. C. 54; s. c. 45 P. L. J. 196, ...	2136
Hartman v. Hazen, 28 Pa. C. C. 311, ...	1588
Haspel v. O'Brien, 218 Pa. 146, reversing 32 Super. Ct. 147, ...	1683
Hazel Township, 1 D. R. 813; s. c. 6 Kulp 491, ...	2136
Heidelberg Township Road, 47 Pa. 536, ...	1739, 1758
Heist v. Montgomery County, 1 D. R. 546, ...	1754, 1757
Hellertown Road, 5 W. & S. 202, ...	1760
Hempfield Township Road, 122 Pa. 439, ...	1745
Hempfield Township Supervisors, 36 Pa. C. C. 532; s. c. 11 Del. 188; 57 P. L. J. 235, ...	1643
Henry v. Derr, 7 Lanc. L. R. 29, ...	1971
Henry v. Horstick, 9 Watts 412, ...	1587
Hoffman v. Pittsburgh, 229 Pa. 36, ...	1646
Holden v. Cole et al. 1 Pa. 303, ...	1726
Holtzman v. Braddock, 14 D. R. 547, ...	1646
Hopewell Township, 12 Pa. C. C. 517, ...	1738, 1751
Huston v. Lancaster, 191 Pa. 143, affirming 15 Lanc. L. R. 177; 8 D. R. 19, ...	1640, 1645
Howells v. Morris, 44 Pa. C. C. 139; s. c. 12 Sch. 55; 7 M. L. 194; 25 D. R. 946, ...	2055
Hunter's Private Road, 46 Pa. 250, ...	1777
Huntingdon Township Road Vacation, 18' Luz. L. R. 14, ...	1778
In re Health, Opinion by Frank M. Hunter, Dep. Atty. Gen. 68 P. L. J. 665, ...	2059, 2061
In re Monuments. Opinion by William I. Swope, Dep. Atty. Gen. 69 P. L. J. 263, ...	1994
In re Public Health Opinion by B. J. Myers, Dep. Atty. Gen. 68 P. L. J. 480, ...	2059
Indiana County Road, 51 Pa. 296, ...	1758
Irwin v. Mattox, 138 Pa. 473, ...	1971
Irwin et al. v. Township of Mifflin et al. 64 P. L. J. 445; s. c. 26 D. R. 39, ..	1664
Jackson Street, 83 Pa. 328, ...	1738
Johnstown Telephone Co. v. Ferndale Borough, 47 Super. Ct. 461, ...	2105
Johnstown Telephone Co. v. Southport Borough. 47 Super. Ct. 468, ...	2105
Jones v. Taylor Borough School District, 15 Laek. J. 116, ...	1561
Jutte v. Keystone Bridge Co., 146 Pa. 400, ...	1920
Kean v. Kinnear, 171 Pa. 639, ...	1588
Keller v. Scranton, 200 Pa. 130, ...	1640
Keller v. Scranton, 202 Pa. 586, ...	1640, 1645
Keller's Appeal, 5 Super. Ct. 222, ...	1777
Kelly v. Stephens, 2 Foster 335, ...	1971
Kelly, Jr. v. Gumbert et al. 69 P. L. J. 796, ...	1646

Kennett Electric Light Co. v. Kennett Square Borough, 4 D. R. 707; s. c.	
9 York 65; 6 Del. 229, ...	2136
Keystone Surgical Supply Company v. Bate, 187 Pa. 460, ...	2136
Kidder Township Road, 9 Luz. 10, ...	1734
Killbuck Private Road, 77 Pa. 39, ...	1746, 1768
Kingston School District v. Luzerne County et al., 17 Luz. L. R. 431; s. c.	
6 M. L. R. 197, ...	1646
Kitchen v. Smith, 101 Pa. 452, ...	1587
Knapp v. Miller, 133 Pa. 275, ...	1982
Kohler v. Butler County, 31 Super. Ct. 305, ...	1738, 1757
Kohler v. Reitz, 46 Super. Ct. 350, ...	1684
Kowalski v. Northumberland County, 25 D. R. 313, ...	1539, 1542
Krebs Road, 64 Super. Ct. 492, ...	1777
Kreider v. Hensel, 8 Lanc. L. R. 83, ...	1563
Krensler v. McKees Rocks School District, 256 Pa. 281, ...	1640
Krier's Private Road, 73 Pa. 109, ...	1780
Lackawanna County v. Duffy, 248 Pa. 575, ...	2132
Lackawanna Township Road, 112 Pa. 212, ...	1741, 1745
Laird v. Greensburg, 8 Pa. C. C. 621, ...	1645
Lancaster City v. Haller, 35 Lane. L. R. 97; 27 D. R. 803, ...	1690, 1714
Lanfer v. McGovern, 6 North. C. R. 158, ...	1587
Lansdowne Borough v. Burdsall, 26 D. R. 938; s. c. 31 York 84; 14 Del. 325,	1686
Lansdowne Borough v. Hartel, 48 Super. Ct. 430; affirming 11 Del. 356,	
458, ...	1688, 1690, 1715
Laporte Borough v. Walsh, 28 D. R. 650, ...	1686
Lathrop Township Road, 84 Pa. 126, ...	1741
Leet Township Road, 159 Pa. 159, ...	1739, 1758
Lefevre v. Ranck, 2 Del. 380, ...	1982
Lehigh Coal and Navigation Company's Appeal, 112 Pa. 360, ...	1643
Lehigh County v. City of Allentown, 4 Leh. 176, ...	2146
Lehigh Township Road, 17 Pa. C. C. 236, ...	1883
Lesser v. Warren Borough, 237 Pa. 501, affirming 21 D. R. 578; 60 P. L.	
J. 619; 3 M. L. R. 153, ...	1640
Lewis v. Havard, 1 Chester Co. 189, ...	1588
Liberty Township Road, 46 Pa. C. C. 376; s. c. 28 D. R. 98, ...	1795
Ligonier Borough v. Deeds et al. 3 West 200, ...	1693
Ligonier Borough v. Presbyterian Church, 22 D. R. 868; s. c. 2 West 233; 4 M.	
L. R. 220, ...	1685
Limestone Township Road, 67 Super. Ct. 105, affirming 44 Pa. C. C. 267, ...	1779
Lloyd v. Altoona City, 134 Pa. 545, ...	1661
Londonderry Township Roads, 129 Pa. 244, ...	1785
Long v. Cheltenham Township School District, 269 Pa. 472, ...	1641
Long v. Lemcyne Borough, 222 Pa. 311, 318, ...	2136
Long et al. v. Phillips, 241 Pa. 246, ...	1594
Loretto Road, 29 Pa. 350, ...	1777
Lower Allen Township Road, 18 Pa. C. C. 298, ...	1745
Lower Merion Township Road, 22 Pa. C. C. 645, ...	1734, 1735
Lower Merion Township Road, 58 Pa. 66, ...	1734, 1735
Lower Saucon Township Road, 6 North. C. R. 221, ...	1726, 1732
Lower Windsor Township Road, 30 York 148, ...	1746
Lowry v. Millcreek Township, 61 Super. Ct. 285, ...	1746
Loyalhanna Creek Bridge, 45 Pa. C. C. 311, ...	1883, 1912

McAdoo Borough v. Dailey, 13 M. L. R. 17; s. c. 17 Sch. 126, ...	2136
McAllister v. Armstrong Co. 20 Pa. C. C. 201, ...	1514, 1515
McCandless Township Road, 110 Pa. 605, ...	1779
McClain v. Warren, 14 Pa. C. C. 397, ...	1982
McCormick v. Allegheny County, 263 Pa. 146, ...	1802, 1803
McCracken v. Elder, 34 Pa. 239, ...	1589
McCurdy v. Thompson, 2 Lane. L. R. 297, ...	1982
McDonald Borough v. Williams, 41 Pa. C. C. 157, ...	1690, 1714
McGuire v. Philadelphia, 245 Pa. 287, ...	1652
McKeesport v. Allegheny County, 21 D. R. 326; s. c. 60 P. L. J. 248, ...	2145
McKeesport Borough v. Fidler, 147 Pa. 532, ...	1676
McKenna v. Dunmore Borough, 17 D. R. 908; s. c. 8 Lack. J. 282; 2 Leh. 332; 6 Just. L. R. 169; 21 York 103, ...	2127
McKenzie's Election, 13 Pa. C. C. 546; s. c. 2 D. R. 518, ...	1531
McKinney v. York Co. 8 Del. 551; s. c. 16 York 121, ...	1515
McKinnon v. Mertz, 225 Pa. 85; affirming 56 P. L. J. 195, ...	1640
McLaughlin v. Summit Hill Borough, 224 Pa. 425, ...	24, 44, 1646
Madison and Harmony School House Road, 37 Pa. 417, ...	1778
Magnolia Avenue, 117 Pa. 56, ...	1738
Maloney v. Simpson, 226 Pa. 479, ...	1697, 1714
Manchester Township Supervisors v. Wayne County Commissioners, 257 Pa. 442, ...	1818
Manheim Township Road, 12 Super. Ct. 279, ...	1777, 1784
Manifold v. City of York, 15 D. R. 101; s. c. 19 York 85, ...	2146
Mann v. County of Allegheny et al. 65 P. L. J. 316, ...	1747, 1749
Manor Township Auditors' Report, 37 Lane. L. R. 167; s. c. 29 D. R. 1001, ...	286, 310
Mansfield Borough's Appeal, 158 Pa. 314, ...	1757
Marietta Borough v. Telephone Co. 36 Lane. L. R. 269, 271; s. c. 11 M. L. R. 106; 29 D. R. 32; 37 Lane. L. R. 255, ...	2107
Marion Street, Lancaster, 10 Lanc. L. R. 175, ...	1745
Marshall v. Ellwood City Borough, 189 Pa. 348; s. c. 43 W. N. C. 482, ...	2136
Martin v. Greenwood, 27 Super. Ct. 245, ...	1683
Martin v. Reed, 10 Pa. C. C. 614, ...	1982
Mason v. Township of Hanover et al. 19 Luz. 239, 247, ...	2056, 2062
McGinnis v. Nunamaker, 64 Pa. 374, ...	1747, 1749
Mellick v. Railroad Company, 203 Pa. 457, reversing 17 Super. Ct. 12, ...	1785
Mellinger v. Deibler, 1 Lane. L. R. 73, ...	1971, 1974
Mellen v. Borough of Springdale, 60 P. L. J. 485; s. c. 4 M. L. R. 33, ...	1736
Mifflin Township Road, 16 Pa. C. C. 74, ...	1739, 1758
Mifflin Township Road, 68 Super. Ct. 281, ...	1728
Mifflin Township's Petition, 65 P. L. J. 36, ...	1728
Milford Borough v. Milford Water Company, 124 Pa. 610, ...	2136
Mill Creek Bridge, 17 D. R. 891, ...	1883, 1887
Mill Creek Road, 9 Pa. C. C. 592; s. c. 8 Lane. L. R. 301, ...	1732
Miller v. Westmoreland Coal Co., 40 Pa. C. C. 399; s. c. 22 D. R. 904, ...	1673
Miller et al. v. Gorman and Creston, 38 Pa. 309, ...	1551
Miller's Estate, 18 D. R. 225, ...	1676
Millerstown v. Frederick, 114 Pa. 435, ...	1640, 1645
Millvale Borough, Appeal of Howard et al. 162 Pa. 374, ...	1644
Mitchell v. Berlin Township, 28 D. R. 903, ...	2136
Mitchell v. Wolf, 46 Pa. 147, ...	1971, 1974

	Section
Monessen Borough v. Cent. D. & P. T. Co., 51 Super. Ct. 152; affirming 21 D. R. 904; 1 West 240, ...	2107
Moungahela River Bridge Co. v. Kirk, 46 Pa. 112, ...	1920
Moore v. Marsh, 60 Pa. 46, ...	1588
Moore v. Trout and Groff, 2 Del. 13, ...	1971
Morris v. Hainer, 16 Pa. C. C. 468; s. e. 4 D. R. 635; 43 P. L. J. (o. s.) 133, ...	1711
Morton Borough v. Smith, 23 D. R. 1071; s. e. 12 Del. 523; 5 M. L. R. 282, ..	1686
Mosier v. Potter, 11 Just. L. R. 51, ...	1563, 1589
Motor Vehicle Fines, 68 P. L. J. 698, ...	1951
Motor Vehicles, 1920 Dan. 70; s. e. 68 P. L. J. 194; 6 Dep. Rep. 525, ...	1946
Mount Joy Township Road, 25 Pa. C. C. 111, ...	1739
Mount Oliver Borough v. First German Evangelical Lutheran St. Paul's Congregation of East Birmingham, 51 Super. Ct. 343, ...	1685
Muldenburg Township Road, 4 Berks 176, ...	1739
Murphy v. Dressler, 14 D. R. 129; s. e. 2 Just. L. R. 149, ...	1971, 1972
Mussina v. Clinton Co., 35 Pa. C. C. 155; s. e. 17 D. R. 1093, ...	2146
Myersdale Borough v. Somerset Tel. Co., 68 Super. Ct. 385, ...	2107
Nanticoke Borough v. Bell Telephone Company, 47 Super. Ct. 184, ...	2105
Nescopeck Bridge, 21 W. N. C. 426, ...	1883
Nescopeck Township Road, 2 York 20, ...	1734, 1739
New Hanover Road, 18 Pa. 220, ...	1739
N. Y. & P. T. and T. Co. v. Coudersport Borough, 49 Super. Ct. 46, reversing 38 Pa. C. C. 33; 20 D. R. 346; 2 M. L. R. 223, ...	2105
Newton Township Road, 23 D. R. 482, ...	1777
Newton Township Road, 62 Super. Ct. 519, ...	1758
Newville Road Case, 8 Watts, 172, ...	1751, 1758, 1759
Nichol et al. v. Mussman et al., 64 P. L. J. 435; s. e. 8 M. L. R. 25; 26 D. R. 217, ...	2055
North Franklin Township Road, 8 Super. Ct. 358, ...	1745
North Strabane Township, 35 York 90; s. e. 69, P. L. J. 579, ...	183
North Union Township Road, 150 Pa. 512, ...	1738
Norwood Borough v. Keystone Tel. Co. 64 Super. Ct. 261, affirming 13 Del. 181; 6 Leh. 262; 7 M. L. R. 182; 29 York 46, ...	2105
Odenwelder v. Frankenfield, 153 Pa. 526, ...	1965
Ogle Township, Tax Collector's Bond, 1 Somer. L. J. 69; s. e. 30 D. R. 141, ...	183, 1501
O'Hara Township Road, 87 Pa. 356, ...	1738, 1741
O'Hara Township Road, 152 Pa. 319, ...	1739
Ohio and Ross Township Road, 166 Pa. 132, ...	1758
Oil City v. Hartwell, 164 Pa. 348, ...	1698
Oil City Building and Loan Association v. Shumfelter, 29 Super. Ct. 251, ..	1683
Old Forge Borough v. Foley Estate, 67 Super. Ct. 125, reversing 17 Lack. J. 197, ...	1690
O'Malley v. Olyphant, 198 Pa. 525, ...	1640
Opening of Knox Street, 12 Super. Ct. 534, ...	1739
Opening of Wharton Street, 48 Pa. 487, ...	1749
Opinion by William H. Keller, First Dep. Atty. Gen. 3 Dep. Rep. 3053, ..	1841
Ottercreek Township Road, 104 Pa. 261, ...	1735
Otto Township Road, 181 Pa. 390, ...	1754
Overfield Township Road, 25 Super. Ct. 5, ...	1758
Overton Township Road, 12 D. R. 317, ...	1765

Palmer v. Silverthorn, 32 Pa. 65, ...	1965
Palmer Township, 16 D. R. 10; s. c. 10 North. C. R. 181; 19 York 191, ...	1732
Palmer Township Road, 4 D. R. 568, ...	1758
Parnassus Borough v. Parnassus United Presbyterian Church, 43 Pa. C. C. 142; s. c. 4 West 155, ...	1685
Payments to dependents of enlisted employes. Opinion by Dep. Atty. Gen. 4 Dep. Rep. 425, ...	1521
Payments to dependents of enlisted State employes. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 2949, ...	1521
Payments to dependents of enlisted State employes. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 2983, ...	1521
Payments to dependents of enlisted State employes. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 3237, ...	1522, 1523
Payments to dependents of enlisted State employes. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 2983, ...	1522
Payments to dependents of enlisted State employes. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 2313, ...	1521, 1522
Payments to dependents of enlisted State employes. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 2190, ...	1521, 1522
Payments to dependents of State employes. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 3441, ...	1521, 1523
Pearl Street, 111 Pa. 565; s. c. 15 W. N. C. 205, ...	1738
Pearson v. Kantrier et al. 8 Sch. 63, ...	1645, 1647
Penn Township v. Perry County. 78 Pa. 457, ...	1883
Penna. Gas Company's Petition, 258 Pa. 234, ...	2107
Pequea Creek Bridge, 68 Pa. 427, ...	1883
Petition of Lewis Palmer, 1 Del. 269, ...	1758
Petition of Postal Tel. Cable Co., 57 P. L. J. 49, ...	2107
Petition of Telephone Co. 63 P. L. J. 401, ...	2105
Phelps et al. v. Philadelphia et al. 12 Phila. 300, ...	1673
Philadelphia v. Dale, 56 Super. Ct. 342, ...	1692
Philadelphia v. DeArmond, 63 Super. Ct. 436, ...	1676, 1688
Philadelphia v. DeHaven, 41 Super. Ct. 265, ...	1676
Philadelphia v. DeHaven, 38 Super. Ct. 541, ...	1676
Philadelphia v. Elliott, 23 D. R. 643, ...	1688, 1700
Philadelphia v. Fairhill Railroad Company, Nos. 1 and 2, 41 Super. Ct. 245, 246, ...	1682, 1685
Philadelphia v. Hyde, 48 Super. Ct. 269, ...	1684, 1714
Philadelphia v. Kinkaid, et al. 24 D. R. 287, ...	1690
Philadelphia v. Lewis, 40 Pa. C. C. 698; s. c. 22 D. R. 176, ...	1690, 1714
Philadelphia v. Mason, 37 Super. Ct. 478, ...	1688, 1697, 1720
Philadelphia v. McLinden, 205 Pa. 172, affirming 26 Pa. C. C. 287, ...	2005
Philadelphia v. Meighan, 15 D. R. 10, ...	1690
Philadelphia v. Pemberton, 208 Pa. 214, ...	1679, 1784
Philadelphia v. Pemberton, 206 Pa. 73, ...	1719
Philadelphia v. Pemberton, 25 Super. Ct. 323, reversing 29 Pa. C. C. 252; s. c. 32 D. R. 743, ...	1679, 1684
Philadelphia v. Philadelphia and Reading R. R. Co., 38 Super. Ct. 529, 531, ...	1682, 1685
Philadelphia v. Street, 41 Super. Ct. 503, ...	1688
Philadelphia v. Unknown, 24 D. R. 753, ...	1697
Pike County v. Rowland, 94 Pa. 238, ...	1640

Pike Township Road, 30 Super. Ct. 644, ...	1705
Pine Creek Township Bridge, 24 D. R. 401, ...	1884
Pine Creek Township Road, 17 D. R. 86; s. e. 24 Mont. 9, ...	1748
Pitt Township Road, 1 Pa. 356, ...	1745
Pittsburgh v. Calvary Cemetery Association, 44 Super. Ct. 289, ...	1685
Pittsburgh v. Moreland, 47 P. L. J. 195, ...	2131
Pittsburgh v. O'Brien, 239 Pa. 60, affirming 60 P. L. J. 545, ...	1698
Pittsburgh and Allegheny Telephone Co. v. Braddock Borough, 43 Super. Ct. 456, affirming 56 P. L. J. 372, ...	2105
Pittsburgh and Lake Erie R. R. Co. v. Lawrence County, 198 Pa. 1, ...	1883
Pittsburgh Hunting Club v. Snyder, 51 Super. Ct. 174, ...	1594
Plainfield and Washington Township Road, 56 Super. Ct. 479, reversing 14 North. C. R. 10, ...	1779
Planting of Trees along Public Roads, 8 Dau. 6, ...	1597
Platt et ux. v. Newport Township, 21 Luz. 355, ...	660
Plumcreek Township Road, 110 Pa. 544, ...	1768
Pocopson Road, 16 Pa. 15, ...	1769
Popp v. Eamigh, 54 Super. Ct. 263, ...	1564, 1588
Port Clinton v. Postal Tel. Co. 4 Sch. 178, ...	2107
Postal Telegraph Cable Co. v. Altoona, 58 Super. Ct. 24, ...	2105
Postal Tel. Cable Co. v. Hollidaysburg Borough, 17 D. R. 298, ...	2107
Postal Tel. Cable Company's Petition, 57 P. L. J. 49, ...	2107
Postal Telegraph Co. v. City of Lancaster, 18 D. R. 874, ...	2107
Potters National Bank v. Ohio Township, 260 Pa. 104, ...	1643
Pottstown Bridge, 5 Pa. C. C. 334, ...	1883
Private Road of Wright in Black Creek Township, 19 Luz. L. R. 37, ...	1757
Prospect Park Borough v. Duhring, 14 Del. 315, ...	1680, 1687, 1690, 1699
Prospect Park Borough v. McCoach, 52 Super. Ct. 527, ...	1693
Prospect Park Borough v. Wyndham, 8 M. L. R. 55; s. e. 14 Del. 117, ...	1687, 1696, 1699
Public Roads. Opinion by Dep. Atty. Gen. 14 D. R. 288, ...	1597
Punxsutawney v. Cormalt, 44 Super. Ct. 365, ...	1686
Punxsutawney Borough v. Nordstrom, 61 Super. Ct. 253, ...	1688
Punxsutawney Borough v. Wingert, 63 P. L. J. 155, ...	1688
Punxsutawney Borough v. Western Union Tel. Co. 18 D. R. 308, ...	2107
Rafalovitch v. Klinger Company, 66 P. L. J. 277, ...	1947
Rainsburg Borough v. Fagan, 127 Pa. 74; s. e. 12 M. L. R. 177, ...	1645
Ransom Township Road, 15 Lack. J. 109, ...	1735
Ralpho Township Supervisors v. Cardell, 4 Northum. L. J. 393; s. e. 15 Del. 389; 9 Leh. 107, ...	699
Rapho Township Road, 22 Lanc. L. R. 29, ...	1778
Reading v. Moers, 11 Berks 229; s. e. 11 M. L. R. 95, ...	1688
Reber's Petition, 235 Pa. 622, ...	1751
Reserve Township Road, 2 Grant 204, ...	1758, 1769
Richards v. Borough of Freedom, 65 P. L. J. 600; s. e. 34 Lanc. L. R. 395, ...	1936
Riebe v. Walton, 18 Pa. C. C. 289; s. e. sub nomine Riebe v. Lansford Borough, 5 D. R. 557, ...	2136
Road and Bridge Viewers, 8 Pa. C. C. 557, ...	1732
Road between Priceville and Scott Township, 1 Lack. J. 171, ...	1726, 1755
Road Case, 3 W. & S., 559, ...	1745
Road Case, 4 W. & S., 39, ...	1745
Road in Blakely, Dickson and Scott, 1 Lack. J. 321; s. e. 4 Del. 233, ...	1784
Road in Bloomsburg and Scott Townships, 11 D. R. 93, ...	1730, 1745

	Section
Road in Covington, No. 2, 1 Wilcox 121, ...	1779
Road in Crescent and Moon Townships, 64 P. L. J. 652; s. c. 30 York 130, ...	1728, 1740
Road in Curtin and Boggs Townships, 23 Pa. C. C. 328, ...	1728
Road in Dallas and Kingston Townships, 7 Luz. L. R. 147, ...	1779
Road in Exeter, 2 Woodw. 209, ...	1777
Road in Fulton Township, 23 D. R. 678, ...	485
Road in Green and Guilford Townships, 21 Super. Ct. 418, ...	1728
Road in Health and Barnett Townships, 21 Pa. C. C. 254; s. c. 4 Lack. L. N. 261, ...	1778
Road in Lake and Dallas Townships, 12 Luz. L. R. 217, ...	1784
Road in Middle Creek and Union Townships, 9 Pa. 69, ...	1745
Road in Montrose, 4 W. & S. 39, ...	1745
Road in Norriton and Whitpain Townships, 4 Pa. 337, ...	1745
Road in Penn and Warwick Townships, 11 Lane. L. R. 331, ...	1741, 1758
Road in Potter and Tioga Counties, 10 D. R. 456; s. c. 8 North. C. R. 91, 1728, 1777	
Road in Rapho and East Donegal Townships, 17 Lane. L. R. 108; s. c. 7 Del. 571; 7 North. C. R. 171, ...	1778
Road in Sectt and Union Townships and Green Tree Borough, 17 D. R. 791, ...	1726
Road near La Grange Station, 43 Pa. C. C. 383, ...	1758
Roaring Creek Road, 11 Pa. 356, ...	1727
Robinson v. Fetterman, 14 Atl. 245, ...	1982
Roche's Private Road, 10 Super. Ct. 87, ...	1739
Rohrer v. Rohrer, 18 Pa. 367, ...	1965
Rothey v. Worcester, 33 Pa. C. C. 168; s. c. 16 D. R. 692; 54 P. L. J. 297, ...	1971, 1972
Rowley v. Greenville Borough School District, 40 Pa. C. C. 140, ...	1560
Roy v. Columbia Borough, 192 Pa. 146, ...	1646
Rule to strike off tax lien against Schappert, 18 Luz. L. R. 76, ...	1690
Rush Township Road, 10 D. R. 650, ...	1738
Sadsbury Township Road, 147 Pa. 471, ...	1726, 1735
Sanger v. Commonwealth, 258 Pa. 239, affirming 45 Pa. C. C. 452, ...	1777, 1795
Safe Deposit Bank of Pottsville v. County of Schuylkill, 190 Pa. 188, ...	1645
St. David's Church v. Sayers, 244 Pa. 300, ...	495
Salem Township Road, 23 D. R. 140, ...	1728, 1780
Salem Township Road, 103 Pa. 250, ...	1739
Sandy Lick Creek Road, 51 Pa. 94, ...	1768, 1769
Scheidy v. Huey, 18 D. R. 967, ...	1962, 1963
Schuldice v. Pittsburgh, 234 Pa. 90, affirming 59 P. L. J. 192, 1640, 1644, 1645, 1652	1659
Schuldice v. Pittsburgh, 251 Pa. 28, ...	1640, 1644, 1645, 1652, 1659
Schuylkill County Commissioners v. Snyder, 20 Pa. C. C. 649, ...	1644
Schuylkill River Road, 19 Super. Ct. 376, ...	1735
Scott v. Whitely, 2 Clark 118, ...	1588
Scott Township v. Davis, 68 P. L. J. 217, affirmed in 77 Super Ct. 352, 1677, 1688	
Seranton v. Carter Estate, 21 Lack. J. 68, ...	1686
Seranton v. Genet, 232 Pa. 272, ...	1688
Seranton v. Kennedy, 22 Lack. J., 183, ...	1697
Seranton v. Koehler, 36 Super. Ct. 95, affirming 8 Lack. J. 83, ...	1696
Seranton v. Vail et al. 6 Kulp 237, ...	1659, 1660
Seranton City v. McAnulty, 26 D. R. 66; s. c. 8 M. L. R., 31; 17 Lack. J. 107, 1696	
Seranton City v. Meadow Brook Land Company, 20 Lack. J. 33; 28 D. R. 882, ...	1697
Seranton City v. Richmond, 16 Lack. J. 64, ...	1688

Seranton City v. Seranton Hosiery Mills, 44 Pa. C. C. 87; s. c. 16 Lack. J.	
275, ...	1688, 1696, 1697
Seranton City v. Stokes Nos. 1 and 2, 28 Super. Ct. 434, 437, ...	1688, 1696, 1720
Seranton Sewer, 213 Pa. 4, ...	562, 1684
Sedgwick v. Erie Co., 7 Just. L. R. 218, ...	2146
Sener et al. v. Ephrata Borough, 176 Pa. 80, ...	1647
Sewickley Township Road, 26 Super. Ct. 572, ...	1739
Shady Avenue, 34 Super. Ct. 327, ...	1686
Sharett's Road, 8 Pa. 89, ...	1753
Sharpsville Borough v. Randall, 73 Super. Ct. 61, ...	1694
Shaw v. Commonwealth, 72 Pa. 68, ...	1982
Shetzline et al. v. Laver, 19 D. R. 1025, ...	2098
Shrewsbury Township Road, 14 D. R. 468, ...	1728
Slugar v. Mailly, 4 Pa. C. C. 77, ...	1971
Singer et al. v. Detrick, 9 Just. L. R. 105, ...	1962
Sinmehahoning Iron and Coal Company v. Cameron County et al., 12 Pa. C. C. 291, ...	1594
Sitler v. Singer Mfg. Company, 30 Pa. C. C. 1; s. c. 14 D. R. 382, ...	1588
Smedley v. Irwin, 51 Pa. 445, ...	1753
Smeich v. York, 68 Pa. 439, ...	1588
Smith and Warren v. Meadow Brook Brewing Company, 3 Lack. J., 145, ..	1593
Smithfield Creek Bridge, 6 Wh. 363, ...	1883, 1887
Snively v. Leaman, 38 Lane. L. R. 3, ...	1942
Snyder v. Brookville Borough, 12 Just. L. R. 234, ...	2136
Snyder v. School District of Greensburg et al. 15 Lack. J. 317; s. c. 4 West. L. J. 13, ...	1652
Snyder et al. v. Commissioners of Schuylkill County, 190 Pa. 440, affirming 20 Pa. C. C. 649, ...	1644, 1652, 1659
Somerset Borough v. Sweitzer, 54 Super. Ct. 283, ...	1699
Somerset Township Supervisors v. County Commissioners, 251 Pa. 164, ...	1818
Somerville v. Gallaher, 13 Pa. C. C. 666, ...	1561
South Abington Township Road, 109 Pa. 118, ...	1728, 1735, 1738, 1739, 1752
South Shenango Township Road, 25 Pa. C. C. 587, ...	1734, 1777
Spatz v. School Districts of Heidelberg and Robesonla, 25 D. R. 452; s. c. 7 Berks 222, ...	1643
Spring Garden Road, 43 Pa. 144, ...	1728
Springfield Township v. Public Service Commission, 74 Super Ct. 217, ...	381
Springfield Township v. Public Service Commission, 74 Super. Ct. 220, ...	386
State Highway. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 2666, ...	1826
State Highway Commissioner v. Chambersburg and Bedford Turnpike Company, 242 Pa. 171, ...	1821
State Highway Repairs. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 3053, ...	1826
State Highways. Opinion by Dep. Atty. Gen., 1915-1916, Report and Official Opinions of the Attorney General, 261, 264, ...	1826
State Highways. Opinion by Dep. Atty. Gen., 1915-1916, Report and Official Opinion of the Attorney General, 267, ...	1826
State Officers and Employees. Opinion by Dep. Atty. Gen., 3 Dep. Rep. 3405, ..	1521
State Road from Phoenixville to the Trappe, 52 Pa. 162, ...	1781
Steelton Borough's Election, 22 Pa. C. C. 593, ...	1646
Stephens v. Shriver, 25 Pa. 78, ...	1967
Stevenson v. Henderson, 234 Pa. 478, affirming 39 Pa. C. C. 237; 59 P. L. J. 665, ...	1561
Stewart v. Benninger, 138 Pa. 437, ...	1982

Stewart v. Maple, 70 Pa. 256, ...	1551
Stewart's Private Road, 38 Super. Ct. 339, ...	1768
Storch v. Lansdowne Borough, 239 Pa. 306, ...	1646
Stowe Township v. Sterrett, 66 P. L. J. 709, ...	1688, 1690
Stowe Township Road, 20 Super. Ct. 404, ...	1739
Strasburg Township Road, 15 D. R. 666; s. c. 23 Lane. L. R. 94, ...	1739, 1778
Street v. Commonwealth, 6 W. & S. 209, ...	1545
Strouser v. Kosier, 58 Pa. 496, ...	1982
Stubber's Road, 28 Pa. 199, ...	1780
Swatara Township School District's Appeal, 1 Super. Ct. 502, ...	1561
Tarentum Borough v. Moorehead, 26 Super. Ct. 273, ...	1688, 1720
Taylor v. Philadelphia, 261 Pa. 458, reversing 26 D. R. 979, ...	1997
Templeton v. Williams, 29 Super. Ct. 272, affirming 24 Mont. 194; 22 York 11, ...	1514
Tiegel v. Love, 62 P. L. J. 532, affirmed in 61 Super. Ct. 149, ...	1697, 1720
Towamencin Road, 23 Pa. C. C. 113, ...	1728
Troop v. Pittsburgh, 254 Pa. 172, ...	1640
Tubbs v. Tioga County, 16 D. R. 318; s. c. 32 Pa. C. C. 504, ...	1605
Tulpehocken Township Road, 21 D. R. 158; s. c. 3 Berks. 387, ...	1740
Turner v. Richards, 34 Super. Ct. 624, ...	1962
Twenty-eighth Street, 102 Pa. 140, ...	1738
Umbria Street, 32 Super. Ct. 333, ...	1739, 1740
Union Dale Cemetery Company's Case, 227 Pa. 1, ...	1685
Union Tel. Co. v. Greenville Borough, 18 D. R. 932; s. c. 36 Pa. C. C. 197, ...	2107
Union Township Road, 10 Pa. C. C. 433, ...	1779
United Brethren Congregation v. Emaus Borough, 56 Super. Ct. 136, ...	1736
United Telephone and Telegraph Company's Petition, 31 Pa. C. C. 481; s. c. 4 Just. L. R. 280; 10 Del. 29; 7 Lack. J. 85; 15 D. R. 193, ...	2109
Upper Darby Township Road, 15 Super. Ct. 652, ...	1739
Upper Mahanoy Township Road, 12 Pa. C. C. 618, ...	1739
Upper Saucon Township Road, 3 Leh. 177, ...	1728
Upper Yoder Township Road, 61 Super. Ct. 394, ...	1758
Upper Yoder Township Road, 129 Pa. 640, ...	1758
Upsal Street, 22 Super. Ct. 150, ...	1739
Vacation of County Road, formerly the Maytown and Marietta Turnpike, 37 Lane. L. R. 475, ...	1803
Vacation of Public Road, 69 P. L. J. 422, ...	1779
Vacation of Streets, 17 Phila. 660; s. c. 1 Lane. L. R. 222, 270, ...	1780, 1783
Van Buskirk et al. v. Dawley, 91 Pa. 423, ...	1726
Vandamayer v. Wood, 2 Ash. 203, ...	1971
Vandermark v. Phillips, 116 Pa. 199, ...	1593
Vernon Park, Philadelphia's Appeal, 163 Pa. 70, ...	1757
Vernon Township Road, 70 Pa. 23, ...	1758, 1777
Versailles Township Auditor's Report, 23 D. R. 781; s. c. 61 P. L. J. 497, ..	2136
Voltz v. County of Erie, 3 Erie Co. L. J. 52, ...	1543
Volunteer Police. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 3, ...	1517
Volunteer Police. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 3320, ...	1518
Volunteer Police Force. Opinion by Atty. Gen. 4 Dep. Rep. 1556, ...	1517, 1519
Volunteer Police Officers. Opinion by Dep. Atty. Gen. 3 Dep. Rep. 3625, ..	1519
Wainright v. Mooney, 64 P. L. J. 267; s. c. 14 Del. 66, ...	1688, 1711
Walker's Election in Carbondale Township, 3 Luz. L. R. 120, ...	1581
Walnut Street, 24 Super. Ct. 114, ...	1754, 1757
Walsh v. Borough of Throop, 18 Lack. J. 130, ...	2123

	Section
Warriorsmark Township Road, 126 Pa. 305, ...	1738, 1751, 1759
Washington Road, 72 Super. Ct. 461, ...	1728, 1780, 1786
Waters v. Tamaqua Borough, 37 Pa. C. C. 65; s. c. 19 D. R. 1075; 5 Sch. 148; 2 M. L. R. 15, ...	1640
Weaver v. Block, 1 Just. L. R. 80; s. c. 18 Mont. 195, ...	1963
Weaver v. Schuylkill Co., 17 Super. Ct. 327, affirming 23 Pa. C. C. 507; 9 D. R. 467, ...	1514, 1515
Weber v. Greenebaum, 270 Pa. 382, ...	1942
West Bradford Township Road, 2 Chester 313, ...	1758
West Chester v. Postal Telegraph Cable Co. 227 Pa. 384, affirming 30 Super. Ct. 603 affirming 18 D. R. 101, ...	2105
West Donegal Township Road, 13 D. R. 88, ...	1744
West Pikeland Road, 63 Pa. 471, ...	1735
West Reading Borough v. Schlegel et al. 9 Berks 169, ...	1696
West Whiteland Road, 4 Pa. C. C. 511; s. c. 4 Montg. 11, ...	1738
Westfield Borough v. Tioga County, 150 Pa. 152, ...	1883, 1911
Weston v. Commonwealth et al. 50 Pa. C. C. 299, ...	1939
Wheeler et al. v. Philadelphia, 77 Pa. 338, ...	1662
Whitby Avenue, 22 Super. Ct. 526, ...	1748
Whiteley Road, 2 Mon. 194, ...	1779
Widening of Chestnut Street, 128 Pa. 214, ...	1757
Widening of East Avenue in the Brough of Jenkintown, 7 Lane. L. R. 164; s. c. 6 Montg. 45, ...	1731, 1732
Widening Merion Avenue, 4 Del. 452; s. c. 7 Montg. 102, ...	1738
Wilbur v. Loveland, 5 Luz. 122, ...	1971, 1972
Wilkes-Barre v. County of Luzerne, 5 Luz. L. R. 75, ...	1646
Wilkes-Barre City's Appeal, 109 Pa. 554, ...	1645
Wilkes-Barre City's Appeal, 116 Pa. 246, ...	1659
Williamsport v. Commonwealth, 84 Pa. 487, ...	1645
Wilson v. Blaine et al. 262 Pa. 367, ...	1646
Windber Telephone Company v. Scalp Level Borough, 47 Super. Ct. 470, ...	2105
Winsor Township Road, 14 D. R. 415, ...	1728
Winton Coal Company v. Campbell, 2 Laek. J. 364, ...	1593
Witherop v. Titusville School Board et al., 7 Pa. C. C. 451, ...	1646
Wolf v. Salem Township, 35 Pa. C. C. 157; s. c. 17 D. R. 1006, ...	2127
Wolford v. School District of Upper Salford, 46 Super. Ct. 1, affirming 8 Just. L. R. 134, 135, ...	2136
Wood et al. v. Winslow Township, 26 D. R. 575, ...	2136
Woodward v. Fayette County, 258 Pa. 375, ...	1749
Wright v. Luzerne County, 67 Super. Ct. 618, ...	1795
Wright and Slingluff v. Wigton et al. 84 Pa. 163, ...	1588
Wright Township Road, 14 Luz. 23, ...	1728
Wyoming County Road, 13 D. R. 145; s. c. 5 Laek. J., 170, ...	1778
Yates v. Connellsville Borough, 40 Pa. C. C. 33; s. c. 60 P. L. J. 438; 4 M. L. R. 26; 21 D. R. 1048, ...	1640, 1652
York v. Eyster No. 2, 30 York 29, affirmed in 68 Super. Ct. 104, ...	1687
York City v. Beitzel, 41 Super. Ct. 194, reversing 21 York 100; 2 Leh. 315, ...	1681, 1693, 1696, 1699
York City v. Eyster, 68 Super. Ct. 104, affirming 29 York 193; 30 York 29, ...	1684, 1685
York City v. Holtzapple, 67 Super. Ct. 596, affirming 7 Leh. 193; 30 York 173, ...	1684, 1690, 1692

York City v. Miller, 254 Pa. 436, affirming 60 Super. Ct. 407, reversing 28	
York 17, ...	1687, 1690, 1696, 1699
York County Commissioners v. The Commonwealth, ex rel. Smyser, 72 Pa. 24, 1883	
York Township Road, 11 D. R. 706, ...	1738
Yost's Report, 17 Pa. 524, ...	1753
Young v. Conche, 52 Super. Ct. 592, ...	1971, 1972
Youngwood Borough v. Gay, 7 West. 1, affirmed in 71 Super. Ct.	
154, ...	1676, 1681, 1688
Zimmerman v. Reading, 18 D. R. 1011; s. c. 1 Berks 114; 22 York 131, ..	1706

INDEX

References are to Sections

ACCTIONS,	Sec
Against townships,	
Affidavits of defense not required to be filed in, ...	2123
Appeal by tax payer in behalf of township, affidavits, costs, ...	1399
Filing in court of common pleas, effect of, ...	1400
When permissible, ...	1398
Defense to be made by commissioners or supervisors, ...	1395
Execution on judgments, procedure, ...	1396
Judgements by justices of the peace,	
Effect of failure to file certificate concerning, ...	2127
Entry of certificate concerning, by prothonotary, ...	2125
Fees of prothonotary for entering certificate, concerning, ..	2126
Plaintiff to file facts concerning, in prothonotary's office, ...	2124
Process to be served upon commissioners or supervisors, ...	1395
Tax payer, defense of suit by, filing petition, bond, ...	1397
Tax payer may inquire into validity of judgement, ...	1397
By townships,	
Appeal by townships or tax payer from settlement of auditors, ..	332
Brought and conducted by commissioners or supervisors, ...	1395
Municipal claims, recovery of, jurisdiction, ...	1401
On bonds with corporation or surety company as surety, to be brought in county in which township is located, service of summons, ...	2128-2130
Executions against townships on judgements, procedure for, ...	1396
Townships of the first class, suits by and against, to be in name of,	380
Townships of the second class, to be in name of, ...	385
ACTS OF ASSEMBLY, list of those repealed by General Township Act,	1500
AFFIDAVITS OF DEFENSE, townships not required to file, ...	2123
ANIMALS, running at large of, to be regulated by township commissioners,	381
ARMORIES,	
Appropriation for by,	
Township commissioners, ...	381
Township supervisors, ...	386
Water, light and fuel for, to be furnished by,	
Township commissioners, ...	381
Township supervisors, ...	386
ASSESSMENTS, see TAXATION.	
ASSESSORS, see OFFICERS AND EMPLOYEES.	
ASHES, see GARBAGE.	
ASSISTANT ASSESSORS, see OFFICERS AND EMPLOYEES.	
ASSISTANT ENGINEER, see OFFICERS AND EMPLOYEES.	
ASSOCIATION,	
State association of township supervisors and commissioners,	
Expenses of annual meeting and liability for, ...	1527
Expenses of delegates, and liability for, ...	1526
Formation, purpose and meetings of, ...	1524
Representation from county associations, ...	1525
Statement of expenses to county treasurers, and payment of, ..	1528, 1529
ASSOCIATIONS OF TOWNSHIP COMMISSIONERS AND SUPER- VISORS,	
Compensation of officers, ...	197

ASSOCIATIONS OF TOWNSHIP COMMISSIONERS AND SUPERVISORS, Cont.

Expenses of holding conventions of, to be paid by county treasurer,	198
Formation of, ...	195
Officers of, ...	197
Representatives of State Highway Department to be eligible to membership, ...	197
Treasurer of, statement of cost of holding conventions to be filed with county treasurer, by, ...	198
AUDITORS, see OFFICERS AND EMPLOYEES.	
BOAR, see STRAYS.	
BOARDWALKS, townships of the first class, power to survey, lay out and ordain along turnpike roads, State highways or county roads, ...	980
BONDS, see also FINANCE.	
Suit on where corporation or surety company is surety, to be brought in county where township is located, service of summons, ...	2128-2130
BONE BOILING ESTABLISHMENTS, establishment of, under authority of State Board of Health, ...	2098
BOUNDARIES, see TOWNSHIP LINES AND BOUNDARIES; WARDS.	
BOUNDARY LINES, roads on State boundary lines, ...	1776
BRIDGES, see BRIDGES AND VIADUCTS.	
BRIDGES AND VIADUCTS,	
Acceptance by county of former township bridge, maintenance of, ..	1913
Appropriation of private property for, ...	1891
Assistance in construction of, by county, maintenance of, ...	1911,1912
Canals or railroads, not to be obstructed by, ...	890, 902
Causeways, construction of when required by erection of bridge, ...	1886
Connecting township with city, contract for construction of, by city with county, ...	1909,1910
Construction of by county,	
Advertising for bids, ...	1902
Bond to secure damages for taking, approval by court, effect of, ..	1898
Change of location of, when reconstructed, power of viewers, ..	1884
Change of original plans for, method of, ...	1892
City or borough to pay part of cost of, agreement for, ...	1907
Contracts by county with corporations or persons for special use of bridge, ...	1903
Contracts for, to be let to lowest responsible bidder, security for performance of, ...	1902
Costs of proceedings to assess damages, payment of on repeal of resolution authorizing construction, before entry, ...	1900
Damages for, agreement with property owners, report to court, ..	1894
Entering upon private lands for surveys, power to, ...	1893
Maintenance of, ...	1908
When entered as county bridge, ...	1885
When not entered as county bridge, ...	910
Power of, ...	1883,1884,1885,1891
Power to borrow money for, taxes for, ...	1904,1905
Procedure for, ...	1891
Reconstruction of when destroyed by floods, freshets, fire, etc., loans for, ...	1889,1890

BRIDGES AND VIADUCTS, Cont.

Reconstruction of when it becomes insufficient for accommodation of public travel, procedure, ...	1883
Streets and highways of boroughs or cities, not to be used in, without consent of authorities thereof, ...	1906
Viewers,	
Appointments of, to assess damages, notice, ...	1895,1897
Cost of, compensation of, ...	1897
Proceedings before, notice of meeting, report of, ...	1896
Viewers' report, compensation of, appeal from, jury trial, appeal to Supreme or Superior Court, ...	1899
When crossing boundry line between township and borough, ...	1885
When expense of is more than township can bear, procedure, 1883,1884,1885	
Construction of, over creeks or rivers, not to interfere with navigation thereon, ...	1920,1921
Convict labor not to be employed in construction of, ...	1868
County,	
Acceptance by, of former township bridge, ...	1913
Assistance by, in construction of, when too burdensome for township, maintenance of, ...	1911,1912
Contracts with by city for construction of bridge connecting with township, ...	1909,1910
County bridges, maintenance and repair of, ...	1915
Creeks, bridges over, not to interfere with navigation thereon, ...	1920,1921
Damages and benefits, assessed as part of road, proceedings, of which it is a part, ...	891
Damages for construction of county bridge. agreement with property owners, payable out of, ...	1894
Damages for taking of materials used in construction of bridges, payment of, ...	1917,1918
Damages to property caused by building of, assessment of and releases for, ...	1738
Driving motor vehicle over, at unlawful speed, a misdemeanor, penalty, ...	1923,1924
Embankments, construction of when required by cfection of bridge, procedure, ...	1886
Inspection of by assistant engineer of the Division of Township Highways, ...	1875
Over township boundaries, duty to assist in building and maintaining, 900, 901	
Penal provisions,	
Carrying fire over, ...	920
Driving motor vehicle over at unlawful speed, misdemeanor, penalty, ...	1923,1924
Recovery of fines and penalties, procedure, ...	922
Riding, leading or driving of beasts of burden upon, unlawful, penalty, collection of, ...	1931
Riding or driving horses,etc., over, faster than a walk, ...	920
Permits for construction of bridge unnecessary, where authority has been given by State Highway Department, ...	1922
Plans and specifications for construction and repair of, approval of by township commissioner of State Highway Department. ..	1874
Plans and specifications for, to be furnished by State Highway Department, ...	1878

BRIDGES AND VIADUCTS, Cont.

Posting of notice of fines and penalties on, ...	921
Power of county to take private property for bridge purposes, ...	1891
Railroad bridge, construction of so as to maintain with the public road, ...	1919
Recovery of fines and penalties for violation of penal provisions, relative to, ...	922
Repair of bridges erected by county, ...	1915
Rewards for construction of, evidence of completion of work, required by Highway Department, ...	435
Rewards for erection of,	
Apportionment of and application for, ...	432
In first and second class townships, ...	432, 433, 434, 435, 437
Type of, necessary for, ...	434
Withholding of, for neglect of supervisors to observe rules of Highway Department, ...	437
Work may have been done by township, ...	435
Rivers, bridges over, not to interfere with navigation thereunder, ..	1920, 1921
Roads, change, relocation or vacation of, by bridge viewers, ..	1884, 1887, 1888
Roads leading to county bridges, construction of by county, ...	1914
State Highway Department, authority from for construction of bridge, other permits unnecessary, ...	1922
Supervision of construction and repair of, by assistant engineer of the Division of Township Highways, ...	1875
Surveyor, one to be on each jury of view or review of, ...	1732
Townships of the first class,	
Appropriation of lands and property for, ...	867
Assessment of damages for appropriation of lands and property for, ...	867
Contracts for, ...	868- 877
Awarding of, ...	872
Division of cost of erection and damages awarded, ...	870
May provide for erection of, ...	868, 869
May provide for maintenance of, ...	868, 869, 871
May provide for payment of damages caused by erection of, ...	868, 869
Payments of share of township and other interested parties, ...	871
Provisions of, ...	873
Recording of, ...	876
Contract with railroad company for upkeep, ...	877
Contractor, right of, against parties, ...	874
Damages for erection of as necessary part of, road, etc., to be awarded as part of road proceedings, ...	855
Location and opening of routes for, procedure, ...	866
Maintenance, power to contract for, ...	868
Power to build, ...	875, 890
Power to build over railroads, creeks, etc., to unite two or more streets, ...	865
Reports relative to, to be made to State Highway Department by township commissioners, ...	214
Townships of the second class, repair and inspection of, in, ...	236
Viewers, powers of to change, alter or vacate roads leading to bridges, ...	1884, 1887, 1888
Width of road crossed by bridges or viaduct of any railroad company, ..	1919

BULL, see STRAYS.

BUREAU OF MUNICIPALITIES,

Appointment of chief of, and other employes, salaries of, ...	2148
Duties of, ...	2147
Establishment of, ...	2147
Information to be furnished to by township officials, ...	2149

BURIAL GROUNDS, see CEMETERIES AND BURIAL GROUNDS.

CANADA THISTLES,

Constable, duty of to cut and destroy,	
After failure of land holder to, ...	1988
When growing on mountain or unseated lands, ...	1989
Cost of cutting and destroying by constable or supervisor, collection of, ...	1988
Duty of land holder to cut, penalty, collection of, ...	1987,1988
Highways, duty of supervisors to cut and destroy, when growing along, ...	1989
Land holder, duty of to cut, penalty, collection of, ...	1987,1988
Mountain land, duty of supervisor or constable to cut and destroy when growing on, after failure of owner to, penalty, ...	1989
Notice to be given by constable or supervisor to land holder to cut and destroy, ...	1988
Notice to be given to constable or supervisor of growing of, ...	1988
Supervisors, duty to cut and destroy,	
After failure of land holder to, ...	1988
When growing along highways, penalty, ...	1989
When growing on unseated or mountain land, compensation, penalty, ...	1989
Unseated lands, duty of supervisors or constable to cut and destroy when growing on, after failure of owner to, penalty, ...	1989

CATTLE, see STRAYS.

CAUSEWAYS, see BRIDGES AND VIADUCTS.

CEMETERIES AND BURIAL GROUNDS,

Brush, grass, briars and weeds growing in, to be cut down by supervisors, petition for, payment of cost of, ...	2118
Changing location of upon petition of cemetery company, procedure, ...	2113,2114
Neglected,	
To be kept in repair by overseers of the poor in certain districts, expense of, ...	2120-2122
To be kept open, ...	2119
To be taken charge of by supervisors, ...	2117
Opening of roads and streets through, forbidden, ...	1736
Overseers of poor to keep certain neglected cemeteries in repair in certain districts, expense of, ...	2120-2122
Removal of bodies upon petition of cemetery company, procedure, costs, ...	2113,2114
Roads and streets not to be opened through, ...	496
Sale of,	
By cemetery company, procedure, ...	2115
Distribution of proceeds from, ...	2116
Supervisors to take charge of neglected burial grounds, ...	2117
Title, transfer of by cemetery company, ...	2115

CRESS POOLS, regulation of by township commissioners, ...

CIRCUSES, see SHOWS.

CLASSIFICATION OF TOWNSHIPS,

Change in, not to affect rights and liabilities, ...	7
--	---

CLASSIFICATION OF TOWNSHIPS, Cont.

Division of, not to affect, ...	66
Population as basis of, ...	15,30,35
Specification of different classes, ...	16
COMMISSIONER OF FORESTY,	
Approval of lands to be used as forests in townships by, ...	1356
Power to direct the administration of forests in townships, ...	1355
Rules to govern administration of township forests, made by, ...	1359
COMMISSIONERS see also ROADS, STREETS AND HIGHWAYS,	
Animals running at large to be regulated by, ...	381
Appeals from assessments on township property, by, ...	1550
Appointment of, to fill vacancy, ...	130
Appropriations by, not to exceed available revenues, ...	390
Approval of, regulations of, shade tree commission, ...	1334
Armories,	
Appropriation for, by	381
Water, light and fuel for, to be furnished by, ...	381
Attendance at convention of commissioners and supervisors, compensation for, ...	196
Certification by, to county commissioners of number of days employed by assessors and assistant assessors, ...	1540
Cess pools, regulation of, by, ...	381
Compensation of, ...	212, 714
Deduction from, for failure to attend meetings, ...	212
Contracts and purchases involving over \$500, to be in writing, ...	393
Contracts and purchases involving over \$500, to be let by, only after advertising, ...	392
Contracts, hirings or purchases, invalid, when made by, without an appropriation having been made therefor, ...	393
Contracts to be let by, to lowest responsible bidder, ...	391
County associations of, formed by, ...	195
Dog owners to be taxed by, ...	381
Dogs running at large to be destroyed by, ...	381
Duplicate of valuation for county purposes to be furnished to, ...	1556
Election of, ...	102, 110
Form of ballots at, ...	111
In consolidated townships, ...	69
Notice of, ...	111
Extortion by, from travelers on public highway, prohibited, ...	845
Fire apparatus, purchase of, by, ...	381
Fire companies,	
Appropriations for, by, ...	381
Regulation of, by, ...	381
Fire houses to be provided by, ...	381
Grading, paving and curbing of sidewalks, by, upon failure by owners after notice, ...	971
Liens for cost of grading, paving and curbing of sidewalks, by commissioners, to be filed by, ...	971
Lights, establishment of, by, ...	381
Lockup or watch house to be provided by, ...	381
Memorial Day services, appropriation for, by, ...	381
Names and addresses of, to be certified to State Highway Department, ...	1881
National Guard, lands for use of, to be taken by eminent domain, ...	381
Nuisances, abatement of, by, ...	381
Ordinances of, to be published, ...	381

	Sec.
COMMISSIONERS, Cont.	
Organization of, ...	210
Place of meeting, ...	210
Police force and night watch, to be established by, ...	381
Power to set aside or acquire land for playgrounds, play fields, gymnasiums, public baths, swimming pools or indoor recreation centres, ...	2041
Powers and duties of, ...	716
President, election and duties of, ...	210
Public buildings, construction and repair of, by, ...	381
Quorum, what shall constitute, ...	211
Railroads and railways,	
Acquisition of by townships, ...	1161
Exclusive franchise for use of streets, enforcement of contract for, ...	1163
Laying and relaying tracks, contract for, ...	1164
Regulation by, contract, of franchises, powers, duties and liabilities of, ...	1161
Relocation, change or elevation of its roads, contracts for, ...	1160
Removal and laying of tracks, change of route, contract for, ...	1162
Reports to be made to State Highway Commissioner by, ...	214
Safety of persons and property, to be secured by, ...	381
Shade Tree Commission, power to establish, ...	1330
Shows, circuses and public amusements to be regulated by, ...	381
Supervision by, of playgrounds, play fields, gymnasiums, public baths, swimming pools and indoor recreation centres, ...	2042
Taxes,	
Abatement of, to be made by, ...	405
Duplicate of assessment of, to be delivered to treasurer, ...	399
Fire houses, ...	397
Levy of, to be made upon all property and occupations, ...	397
Special levy directed by court, to pay deficit, ...	398
Townhouses	397
Township purposes, ...	397
Trees, caring for and changing, ...	397
Time of meetings, ...	211
Townhouses,	
Power to borrow money to procure ground for and erect, ...	1221
Power to procure ground for and erect, ...	1220
Tools, implements, machinery for use on roads, to be purchased by, ..	381
Vacancy in office of, ...	130
Vagrants, to be arrested and detained by, ...	381
Vehicles, power to license and regulate the operation and compensation of, if for hire, ...	1280
Warrants to be issued by, on treasurer, in payment of township indebtedness, ...	396
Water for fire protection, contract for, by, ...	381
Water troughs, erection of, by, ...	1852-1855
CONSOLIDATION OF TOWNSHIP, see CREATION OF TOWNSHIP.	
CONSTITUTION, local and special legislation, provisions relating to, ...	1502
CONTRACTS, see also ROADS, STREETS AND HIGHWAYS.	
Townships of the first class,	
Invalid when made without appropriation therefor, ...	302

CONTRACTS, Cont.	Sec.
Lowest bidder to be awarded, ...	393
Townships of the second class, power to make, ...	385
CONVENTIONS,	
County association of township commissioners and supervisors,	
Attendance at, by commissioners and supervisors, ...	196
May hold, ...	195
COUNTY TREASURER, payment of expenses for holding of convention of association of township commissioners and supervisors,	198
COURTS, quarter sessions authorized to erect townships of second class, ..	20
CREATION OF TOWNSHIPS,	
Consolidation of townships,	
Adjustment of assets and liabilities, ...	66
Agrément for, ...	66
Costs and expenses of, ...	68
Election of officers after, ...	69
Election to determine, ...	67
Filing of, agreement for, ...	68
Final order of court on, to be certified to Secretary of Internal Affairs, ...	1503
Procedure for, ...	66, 67, 68
Rights and liabilities not affected by, ...	69
Supervisors and commissioners of, ...	69
Division of townships,	
Adjustment of indebtedness of townships that have been divided. ..	60
Appointment and duties of commissioners for purpose of, ...	41
By petition of property owners and election, ...	50
Procedure for, ...	50, 51, 52
Class of, not affected by, ...	65
Compensation of commissioners, surveyors, artists, and chain carriers in, ...	55
Election after favorable report of commissioners on, ...	42, 43, 44, 46
Effect of, ...	46
Notice of, ...	45
Final order of court on, to be certified to Secretary of Internal Affairs, ...	1503
Not to affect rights and liabilities thereof, ...	7
Organization of townships and election of officers in townships, formed by, ...	65
Petition to court for, ...	40
Procedure after adverse report of commissioners on, ...	42
Procedure after favorable report of commissioners on, ...	43
Procedure for, ...	40-46
Final order of court on, to be certified to Secretary of Internal Affairs,	1503
First class,	
Advertisement of proclamation of first class townships, by county commissioners, ...	31
Cost of, to be paid by township, ...	31
Appointment of commissioners by court to make enrollment of in- habitants, ...	30
Clerk of courts to certify population to county commissioners, ...	30
Designation of, ...	30
Designation of first class townships by proclamation of county com- missioners, ...	31

CREATION OF TOWNSHIPS,— Cont.

Sec.

Division of Townships, Cont.

Division of, into wards, ...	38
Procedure for, ...	38
Election of officers in newly created, ...	32
Owners of real estate may petition court to determine class, ...	30
Petition to court by owners of real estate to have class determined, ...	30
Population as basis of class, ...	
Methods of determining, ...	30, 31
Population to be determined by U. S. census, ...	31
Proceedings to determine population, ...	30
Costs and expenses of, ...	30
Report of commissioners appointed to make enrollment of inhabitants, ...	30
Advertisement of filing of, and exception to, ...	30
When new government shall go into effect in newly created, ...	32
Reestablishment of townships of second class, ...	35
Procedure for, ...	35

Second class,

Adjustment of indebtedness between new and old townships, ...	28
Separate rates of taxation on different parts of township authorized, ...	28
Appointment, duties and report of commissioners for purpose of creating, ...	21
Appointment of second commissioner when report of first is unfavorable	22
Courts of quarter sessions authorized to create, ...	20
Designation of, by proclamation of county commissioners, ...	36
Election of officers in newly created, ...	36
May be authorized, ...	27
Election to decide, ...	
Court to fix day for holding, ...	24
Duties of court and clerk of court, pertaining to, ...	26
Duties of election officers at, ...	26
Effect of vote at, ...	26
Form of ballot at, ...	24
General election laws to govern, ...	24
Notice of, ...	25
Qualification of voters at, ...	24
Indebtedness, adjustment of, between new and old townships, ...	28
Vote on, by electors of the territory affected, ...	23
When government shall go into effect in newly created, ...	26

CULVERTS, townships of the first class, power to survey, lay out and ordain along turnpike roads. State highways or county roads, ... 980

DAMAGES, see EMINENT DOMAIN.

DEEDS, recording of to be kept by secretary of first class townships, .. 303

DEPUTY TREASURER, see OFFICERS AND EMPLOYEES.

DIVISION FENCES, see FENCES.

DIVISION OF TOWNSHIPS, see CREATION OF TOWNSHIPS.

DOGS,

Destruction of, running at large, to be provided for by township commissioners, ... 381

DOGS, Cont.

Owners of to be taxed by township commissioners, ...	381
--	-----

DRAINS,

Townships of the first class,

Power to survey, lay out and ordain, along turnpike roads, State highways or county roads, ...	980
--	-----

Regulation of by township commissioners, ...	381
--	-----

ELECTIONS, See also OFFICERS AND EMPLOYEES; COMMISSIONERS; SUPERVISORS; CREATION OF TOWNSHIPS; Second Class.

Assessor in first class townships, ...	102
Auditors in first class townships, ...	102
Commissioners in first class townships, election and term of, ...	102, 110
In newly created, first class townships, ...	32
In townships of first class, ...	101- 133
Eligibility to office, ...	100
Term of office, ...	101
In townships of second class, ...	140- 183
Officers to be elected in townships of the first class, ...	102
Treasurer in first class townships, ...	102
Wards to constitute separate district, ...	34

EMBANKMENTS, see BRIDGES AND VIADUCTS.

EMINENT DOMAIN,

Damages, right of, given to all owners or tenants affected by taking, etc.,	485
Hose house, power to acquire land for erection of, ...	1222
Lands and premises, entry upon by townships, ...	460
Lockup, power to acquire land for erection of, ...	1222
Procedure,	
Appeals from assessment of damages, where appeal not otherwise provided, ...	470
Appeals from report of viewers by owner of injured or assessed property, ...	487
Appeals to Superior or Supreme Court after disposal of exceptions or final verdict, ...	488
Assessed value of condemned property as evidence, ...	467
Award of damages and costs, payable into court, ...	470
Collection of awards made by viewers, ...	469
Distribution of compensation awarded, among lien owners and property owners, ...	464
Liens on condemned property,	
Discharge of, ...	464
Hearing to determine priority of, ...	462
Testimony to ascertain priority of, ...	463
Petition for condemnation of lands and premises, ...	461
Possession,	
How to secure after right of is established, ...	472
Right of after acceptance or approval of bond, ...	471
Satisfaction of award when amount is paid into court, ...	470
Testimony as to value of condemned property, ...	466
Value of land condemned not to be assessed against adjoining property, ...	467
Viewers,	
Assessment of damages by, against townships and of benefits in certain cases, ...	486

EMINENT DOMAIN—Cont.

Sec.

Procedure, Cont.

Viewers, Cont.

Court may extend time for making report by, ... 468

Report,

Appeal from by owner of injured or assessed property, .. 487

Confirmation of, ... 469

Exceptions to, any interested party may file, ... 487

When to report, ... 468

Public buildings, power to acquire land for, ... 1222-1234

Sewers and drains, power to acquire property for, ... 1071-1073

Title to condemn property, after payment of claims for compensation, 465

Townhouses, power to acquire land for erection of, ... 1222

Townships of the first class,

National Guard, power to acquire land for use of, ... 381

Parks, parkways and playgrounds, power to acquire land for, .. 1296

Water supply and water works, power to acquire property for extension of system of distribution of water, ... 1182

Townships of the second class, National Guard, power to acquire land for use of, ... 386

ENGINEERS, townships of the first class, appointment of, by township commissioners, ... 213

FENCES,

Along highways opened and leading to driving parks, fairgrounds, etc., 761

Auditors,

Duties of, when acting as fence viewers, ... 1961,1962

To be sworn to act as fence viewers, ... 1963

Cost of erection of, division fence, by aggrieved party, collection of, .. 1961

Erection of for protection of highways from snow drifts, ... 750

Line and division fences,

Charge of, to be borne and maintained by adjoining owners, ... 1965

Cost of view when fence found sufficient by viewers, ... 1961

Erection of by land owners, ... 1961

Erection of when failure of owner to, procedure, ... 1961

Land owner not to be compelled to build or repair during certain months, ... 1961

Land owner to erect, ... 1961

Railroad companies not required to construct, ... 1961

Recovery from owner of adjoining land one-half of cost of construction thereof, ... 1962

Relief of duty to erect by agreement with adjoining owner, ... 1961

Repairing or building by aggrieved party after failure of delinquent, suit for cost of, appeal, ... 1967

Viewers,

Auditors to act as, ... 1961,1962,1963

Compensation of, payment of, ... 1966

Duties of, ... 1961,1962

Filling of vacancy, ... 1964

Penalty for failure or neglect to perform duties, collection of, .. 1969

Quorum, ... 1970

Time of holding view, certificate of, ... 1966

Views not to be held by, between November and April, ... 1968

Wire fence without barbs,

Along highways, lawful, ... 1959

FENCES, Cont.	Sec.
Wire fence without barbs, Cont.	
Lawful, ...	1960
FENCE VIEWERS, see FENCES.	
FINANCE,	
Townships of the first class,	
Bonds of, to be sold to highest bidder after public notice, ...	395
Indebtedness not to exceed two per centum of valuation, ...	395
Indebtedness of former years payable only out of surplus appropriated for current year, ...	394
Interest on bonds not to exceed six per centum, ...	395
Moneys not to be paid out in excess of amounts appropriated for any specific purpose, ...	391
Permanent improvements, loans for, ...	391
Townships of the second class,	
Fiscal year, expiration of, ...	439
Indebtedness, certificates, may be issued by supervisors when highway funds are exhausted, ...	436
FIRES, see FIRE COMPANIES.	
FINES, township treasurer to receive for violations of provisions of township code, for use of road fund, ...	240
FIRE APPARATUS, purchase and maintenance of by township commissioners, ...	381
FIRE COMPANIES,	
Appropriation for, by township commissioners, ...	381
Regulation of, by township commissioners, ...	381
FIRE HOUSES,	
Provision and maintenance of by township commissioners, ...	381
Townships of the first class, erection of after election, ...	381
Townships of the second class, taxes to be levied for erection of, ..	421
FIRST CLASS TOWNSHIPS,	
Commissioners, board of, powers and duties, ...	381
Contracts may be made by, ...	380
Corporate power of, vested in, ...	381
Powers of, ...	380, 381
Real estate may be held by, ...	380
Records of, open to inspection of any tax payer of township, ...	302
Suits may be brought by and against, ...	380
FOOTWALKS, townships of the first class, power to survey, lay out and ordain, along turnpike roads, State highways or county roads, ...	980
FOOTWAYS, see SIDEWALKS.	
FOREIGN FIRE INSURANCE COMPANIES, State tax on, returned to townships, ...	1674
FOREST FIRES, agreements with Department of Forestry for prevention and suppression of, ...	2050, 2051
FORESTS, ...	1355-1362
Townships of the first class,	
Acquiring land for,	
Power to, ...	1355
Procedure, ...	1357
Administration of, under direction of Commissioner of Forestry,	1355
Alienation of, procedure for, ...	1362

FORESTS, Cont.

Sec.

Townships of the first class, Cont.

Approval by Commissioner of Forestry of lands to be used for, ...	1356
Cost of administration and maintenance of, how provided, ...	1360
Cost of land for, how provided, ...	1358
Publication of rules to govern administration of, ...	1359
Revenues from, disposition of, ...	1360
Rules to govern, purpose of, how made and enforced, ...	1359
Use of by public, ...	1361
GARBAGE, townships of the first class, collection and removal of, ...	381
GUIDE POSTS, see ROADS, STREETS AND HIGHWAYS.	

GENERAL TOWNSHIP ACT,

Application of to all townships in Commonwealth, ...	6
Change of class of township not to affect its rights and liabilities, ...	7
Division of township not to affect its rights and liabilities, ...	7
Effect of on,	
Certain other acts, ...	1501
Laws not modified thereby, ...	8
Laws relating to taxation, ...	9
Other laws, ...	3
List of acts repealed by, ...	1500
Provisions not included in, ...	2
Provisions of, severable, ...	4
Reference in to title of other acts, effect of, ...	5
Time of taking effect, ...	1

GYMNASIUMS, erection, maintenance and regulation of, ...	2041-2047
--	-----------

HEALTH, see also PUBLIC HEALTH.

Authorities may declare certain lanes and alleys nuisances, ...	775- 782
---	----------

IMPROVEMENTS, townships of the first class, loans for, ...	391
--	-----

INCOMPATIBLE OFFICES, ...	115, 125, 150
-----------------------------	---------------

Constitutional provisions relating to, ...	1530
--	------

Election officer may be elected to township office, ...	1531
---	------

Township officers, ineligible.

To be school director, ...	1532
------------------------------	------

To board of health, ...	1533
---------------------------	------

INDEBTEDNESS, ...	1639-1674
---------------------	-----------

Acts validating bond issues, ...	1639
------------------------------------	------

Adjustment of, see also CREATION OF TOWNSHIPS.

Second Class, ...	28
---------------------	----

Bonds,

Advertisement of sale of, ...	1663
---------------------------------	------

Denomination of, interest, when redeemable, ...	1645
---	------

Exchange of.

From coupon to registered bond, ...	1669, 1670, 1671
---------------------------------------	------------------

Procedure, interest payments, ...	1669-1673
-------------------------------------	-----------

Issuing of to redeem existing issues and floating indebtedness, ...	1659, 1660, 1661
---	------------------

Registration and transfer of, ...	1669-1673
-------------------------------------	-----------

Sale of at not less than par, ...	1645, 1659, 1660
-------------------------------------	------------------

Sale of to highest responsible bidder, ...	1663
--	------

State tax on, ...	1664
---------------------	------

Collection and payment of, ...	1665, 1666
----------------------------------	------------

Deduction of, from interest paid to holders, ...	1667
--	------

Definition of, ...	1652
----------------------	------

INDEBTEDNESS, Cont.

Sec.

Elections on increase of,

Duty of election officers, returns, expense, ... 1646

Lapse of time required for next election after rejection by electors, ... 1648, 1649

Notice of, ... 1646

Time, place and manner of holding, ... 1646

Increase,

Method of,

When increase is from seven to ten per cent, .. 1641,1644,1650,1651

When increase is from two to seven per cent, ... 1646

Obligations for, not to be issued until statement is filed in court, 1645

Void when above limitation, ... 1644

When assent of electors not required, ... 1640,1645

When assent of electors required, ... 1640,1641

Limitation on, ... 1640

Limitation on power of municipal commission to create, ... 1642

Obligations issued for certain public works, not to be a debt of township, ... 1654-1658

Powers of township in issuing obligations not a debt of township, .. 1657

Sinking fund,

Application of funds in, ... 1661

Levy of annual tax,

To pay within thirty years, ... 1643

When obligations issued to pay certain self-supporting public works, ... 1654,1656

Where bonds are issued to redeem existing indebtedness, 1659,1660

Where increase made with assent of electors, ... 1647

State cannot assume that of township, except in certain instances, .. 1668

State tax,

Collection of by treasurer, ... 1665,1666,1667

Deduction of from interest, ... 1665,1666,1667

Statement,

Annual publication of, contents of, ... 1653

Certified copy to be evidence, ... 1645

Where increase made without assent of electors, contents, filing, 1645

Tax for payment of within thirty years to be lev'd annually, ... 1643,1647

Township not to become stockholder in corporation, nor loan credit, .. 1662

Validating acts, ... 1639

INDEX BOARDS, see ROADS, STREETS AND HIGHWAYS; Guide

Posts and Index Boards.

INDOOR RECREATION CENTERS, erection, maintenance and regulation of, ... 2041-2047

JACK, see STRAYS.

JOINT SEWERS, see SEWERS AND DRAINS.

LIBRARIES, see PUBLIC LIBRARIES.

LICENSES AND LICENSE FEES, ... 1260-1281

Bankrupt's or assignee's stock of goods,

Sale of without license, unlawful, ... 1260

When sale of is allowed without license, ... 1261

Damaged goods,

Sale of without license, unlawful, ... 1260

LICENSES AND LICENSE FEES, Cont.	Sec.
Damaged Goods, Cont.	
When sale of is allowed without license, ...	1261
Dealers, license fee or tax when not required, ...	1270
Disputes concerning,	
Amendments of pleadings in, ...	2106
Appeals to Supreme and Superior Court, ...	2108
Duty of corporations to properly construct works, not altered or affected, ...	2110
Hearings, conduct of, ...	2105, 2106
License fee as fixed by court, duration of, when application for change permitted, ...	2109
License fee to be determined by court, ...	2106
Order of court, fixing amount of, when new application may be made, continuation of, ...	2107
Petition to court, contents of, ...	2105
Powers and duties of courts in determination of, ...	2105, 2106, 2107
Procedure before court, petition, service, answer, ...	2105
Rules and orders, power of court to make, ...	2106
Insurance companies, agents and brokers not to be licensed, ...	1271
Motor vehicles,	
None required to be paid for, ...	2111
Operators not to be required to pay, ...	2111
Officer appointed by court to dispose of goods not required to have license, ...	1261
Sample, license fee or tax not required if selling by, to dealers or merchants, ...	1270
Townships of the first class, vehicles, power to license and regulate the operation and compensation of, if for hire, ...	1280, 1281
Traction engines, tractors or trailers, owners not to be required to pay,	2112
Transient merchants,	
License,	
By whom issued, amount, renewal of, ...	1261
Failure to secure a misdemeanor, ...	1263
Sale without, unlawful, ...	1260
When not required, ...	1261
Sale of goods of bankrupt, assignee, etc., without license, unlaw- ful, ...	1260
LIGHTS, see MOTOR AND OTHER VEHICLES.	
Establishment of by township,	
Commissioners, ...	381
Supervisors, ...	386
Townships of the second class, tax to be levied for lighting highways,	421
LINE FENCES, see FENCES.	
LINES, see TOWNSHIP LINES AND BOUNDRIES; WARDS.	
LINES AND BOUNDARIES, see TOWNSHIP LINES AND BOUND- ARIES.	
LOCAL AND SPECIAL LEGISLATION, constitutional provisions, pro- hibiting, ...	1502
LOCKUPS, see also PRISONS.	
Establishment of by township commissioners, ...	381
Townships of the second class, taxes to be levied for building and main- tenance of, ...	421
MACHINERY, purchase of in first class townships, ...	381

MANURE PITS , townships of the first class, regulation of by township commissioners, ...	381
MEMORIALS ,	
Appropriation by county commissioners,	
For erection of, to commemorate service of soldiers, etc., in World War, ...	2048
To assist townships in erection of, ...	2049
MEMORIAL DAY ,	
Appropriation for services on,	
By township commissioners, ...	381
By township supervisors, ...	388
MONUMENTS ,	
Appropriation by county commissioners,	
For erection of, to commemorate service of soldiers, etc., in World War, ...	2048
To assist townships in erection of, ...	2049
MOTOR AND OTHER VEHICLES ,	
Arrest of offenders, procedure, ...	1948,1949,1956
Attempt to lower speed record upon public highways, a misdemeanor, ...	1940
Bail, holding of vehicle by magistrate, in lieu of, ...	1948
Brakes, ...	1938
Center of highway, operators not to allow vehicles to stand in, ..	1942,1954
Chains, use of certain kind prohibited, ...	1941
Constables,	
Power to arrest upon view, ...	1956
Power to stop, ...	1943
Curves, operators not to pass vehicles ahead at, ...	1942
Driving regulations, ...	1940,1942,1954
Duty of operator to pass vehicles ahead, to the left, ...	1942
Duty of operator to turn to right when meeting or overtaken by faster moving vehicle, ...	1942,1954
Exemption of certain vehicles from registration fee, ...	1935
Fees for registration of, ...	1935
Fines and penalties, collection and disposition of, ...	1951,1957
Hills, operators not to pass vehicles ahead, on crest of, ...	1942
Information,	
As to identity to be furnished by operator to officer, ...	1943
Copy of to be served with warrant, ...	1949
For violation of act, jurisdiction, ...	1946
Time within which to bring, ...	1949
Injury to person or property, duty of driver to stop, in case of, ...	1940
Intersecting highways, operators not to pass vehicles ahead, at, ...	1942
Intersection of public highways,	
Duty of operator at, ...	1942
Right of way at, ...	1942
Intoxication of operator of, a misdemeanor, ...	1940
Justice of the peace to make returns of fines and penalties collected, ..	1951
License,	
Number to be prima facie evidence of ownership, rebuttal of, ...	1947
Revocation of, by State Highway Commissioner, ...	1940
Lights,	
Adjustment of, to prevent dangerous glare, ...	1987

MOTOR AND OTHER VEHICLES, Cont.**Sec.****Light, Cont.**

Approval of devices for controlling, by Highway Commissioner, ...	1937
To be displayed at night, ...	1937, 1952
Turning off, to avoid identification a misdemeanor, ...	1940
When standing upon highway, ...	1937
Muffler cut-outs, not to be used on public highways, ...	1941
Muffler required on engines, ...	1941
Name and address of operator to be furnished to injured party in case of accident, neglect, a misdemeanor, ...	1940
Operation of,	
By person intoxicated a misdemeanor, ...	1940
By person other than owner without permission, a misdemeanor, ...	1940
Operators, rights of on highway, ...	1944
Ordinances, not to be inconsistent with law, ...	1945
Owner of, allowing intoxicated person to operate, guilty of misdemeanor, ...	1940
Parking at night without lights, regulation of, ...	1945
Parking of, regulation of, ...	1945
Penalty for violation of act, second offenses, ...	1950
Police officers,	
Power to arrest upon view, ...	1956
Power to stop, ...	1943
Projections upon tires, size of, ...	1941
Public highways,	
Definition of, ...	1955
Rights of operators on, ...	1944
When not to be closed to, ...	1944
Registration,	
After August 1st, fee for, ...	1935
Certificate or license, exhibiting of, on request of officer, ...	1943
Fee for, expiration of, ...	1935
Right-hand side of road, operators to keep close to, ...	1942, 1954
Signal devise, ...	1938
Special regulations, posting of notice of, ...	1945
Speed,	
Contests between, on public highway, a misdemeanor, ...	1940
Record on public highway, attempt to lower, a misdemeanor, ..	1940
Regulations, ...	1936
In certain sections, ...	1936
Timing of rate of, ...	1946
State Highway Department officer, power of to stop, ...	1943
State Police, power of to stop, ...	1943
Stop, duty of operator to, when signaled, ...	1942, 1943
Street passenger car, duty of operator when meeting or overtaking, ..	1942, 1953
Suspension of license by State Highway Commissioner, ...	1940
Tampering with, by person other than owner, without permission, a mis- demeanor, ...	1940
Trailers, when no registration required for, ...	1935
Use of, by person other than owner, without permission, a misdemeanor, ..	1940
Vehicles ahead to be passed by operator, to the left, ...	1942
Warning, when to be sounded by operator, ...	1939
Warrants, proceedings may be commenced by service of, ...	1949
Weight and size of load regulated, ...	1941

MULE, see STRAYS.

MUNICIPAL CLAIMS,

Adjustment of without filing, ...	1694
Advertisement of sale on, ...	1708
Affidavits of defense,	
Amendment of, ...	1714
Filing of, ...	1697,1714
Judgement for want of,	
Attorney fee, ...	1698
Sufficient, ...	1698
Replication to, ...	1698
Affidavits to petitions, answers, etc., ...	1715
Amendment of proceedings, ...	1714
Amicable proceedings to revive judgement, ...	1700
Appeals from, ...	1688
Appeals to Supreme and Superior Courts, ...	1719
Apportionment of claim on separate properties, ...	1691,1693
Assignment of claims and judgments, ...	1713
Attorney fee, ...	1698,1699
Bond, for stay of proceedings before judgement entered, effect of, ...	1707
Claimant defined, ...	1680
Collection of by lien or by assumpsit, ...	1675,1676,1677
Contents of, ...	1690
Contractor defined, ...	1680
Costs, recovery of, ...	1703
Deed of sheriff, validity of, ...	1711
Defense, procedure in, ...	1694
Definition of, ...	1679
Docketing of proceedings, ...	1705
Evidence, claims, are prima facie, ...	1699
Execution,	
Against quasi-public corporations, ...	1710
Distribution of proceeds when against quasi-public corporations, ...	1710
On judgment on, ...	1708
Plaintiff in judgment may purchase, ...	1709
Procedure in sale of property where bid insufficient, ...	1711
Sale price, minimum, ...	1709
Stay of sale by payment of claim, ...	1711
Testimony as to location of parties respondent, ...	1711
Upset price fixed by plaintiff, ...	1709
Facts averred and not denied taken as true, ...	1715
Filing,	
By municipal authorities, ...	1675
Necessity for or claim lost, ...	1688
Time of, ...	1688
To use of contractor, ...	1684
Form of, ...	1688
Lavari facias, ...	1708
Scire facias in suing out claim, ...	1696,1700
Suggestion and averment, ...	1688
Habere facias possessionem, issuing of to give possession to sequestrator, ...	1704
Highway defined, ...	1678
Intervention by parties having an interest in property, ...	1692

MUNICIPAL CLAIMS, Cont.

Sec.

Judgment,

Assignment of, ...	1713
By default, opening of, ...	1711
Land only bound by, ...	1703
To be final and conclusive after delivery of sheriff's deed, ...	1711

Levavi facias,

Form of, ...	1708
Not to issue until after judgment, ...	1688

Lien,

Duration of, revival, ...	1688
Priority of, ...	1683
When divested by judicial sale, ...	1711
When not divested by judicial sale, ...	1711

Limitation of action for recovery of, ...	1677
---	------

Locality index, certificate of search of, ...	1706
---	------

Non suit, entry of effect of, ...	1695, 1699
-------------------------------------	------------

Notice,

Service of, ...	1716
To claimant to issue scire facias, ...	1695
When filed to use of contractor, ...	1687

Opening judgments by default, ...	1714
-------------------------------------	------

Owner defined, ...	1681
----------------------	------

Payment of money into court, ...	1694
------------------------------------	------

Petitions, service of, ...	1716
------------------------------	------

Plaintiff may purchase at sale on, minimum price, ...	1709
---	------

Pleadings, extension of time for filing, ...	1714
--	------

Procedure,

After expiration of stay, ...	1707
In sale of property where bid insufficient, ...	1711

Property,

Amendment of description of, ...	1714
Apportionment of claim on separate properties, ...	1691, 1693

Definition of, ...	1682
----------------------	------

Intervention by parties having interest in, ...	1692
---	------

Names of persons having interest in to be added to writ, ...	1697
--	------

Redemption of by owner or creditor, ...	1712
---	------

Which exempt from, ...	1685
--------------------------	------

Which liable for, ...	1684, 1685, 1691
-------------------------	------------------

Purchase of propriety by municipalities, ...	1711
--	------

Quasi-public corporations, executions against, ...	1710
--	------

Redemption of property by owner or creditor, ...	1712
--	------

Replications, contents and effect of, filing, ...	1715
---	------

Revival of, ...	1688, 1689
-------------------	------------

Rule,

Facts found by court to be taken as true, ...	1715
Return of, filing, ...	1715
Service of, ...	1716

Sale of property,

Advertisement, ...	1708
Minimum sale price, ...	1709
Procedure where bid insufficient, ...	1711
Stay of by payment of claim, ...	1711
Upset price may be fixed by plaintiff, ...	1709

MUNICIPAL CLAIMS, Cont.

Satisfaction of record,	
By use-plaintiff, ...	1718
When claim paid by one of several defendants, ...	1713
Scire facias,	
Amendment of, ...	1714
Form of,	
In-suing out claim, ...	1696
To revive judgment, ...	1700
Notice to claimant to issue, effect of, ...	1695
Practice and procedure on, ...	1701, 1702
Præcipe for, directions to prothonotary, ...	1696
Revival of lien by, ...	1688
Service of, duty of sheriff, return, ...	1697, 1701
Suit to be by writ of, ...	1696
Security, sufficiency of, approval, ...	1717
Sequestrator, delivery of property to, ...	1704
Sequestrator of rents, issues and profits, appointment of, procedure, ..	1704
Service of notices, petitions and rules, ...	1716
Sidewalks, claim for not to be filed unless owners failed to do work after notice, ...	1686
Stay of proceedings before sale of property, bond, ...	1707
Stay of sale by payment of claim, ...	1711
Testimony as to location of parties, respondent, ...	1711
Time for filing answers, rules and replications, ...	1715
Time of completion of improvements, how determined, ...	1688
Time of filing, ...	1688
Title to land acquired at sales on, method of establishing, procedure, ..	1721-1725
Upset price at sale may be fixed by plaintiff, ...	1709
Validation of certain claims, ...	1720
What may be included in one claim, ...	1688

MUNICIPAL LIENS,

Townships of the first class,	
Sidewalks,	
Cost of grading, paving and curbing of by commis- sioners, ...	971, 982, 993, 1010
Cost of repair by commissioners, ...	1026

MUNICIPAL TAX LIENS, see TAXATION: Municipal Tax Liens.

MUNICIPALITIES, see BUREAU OF MUNICIPALITIES.

NATIONAL GUARD,

Churches, graveyards, cemeteries and dwelling houses, exempted from taking by eminent domain for use of, ...	2053
Gifts of land for use of, ...	2052
Townships of the first class,	
Appropriation of money or land for use of in erection of armory for, ...	381
Lands for use of, to be taken by right of eminent domain, ...	381, 2052
Townships of the second class,	
Appropriation of money or land for use of, in erection of armory for, ...	386
Lands for use of, to be taken by right of eminent domain, ...	386, 2052

NUISANCES,	Sec.
Buildings erected contrary to regulations of township commissioners, declared to be, ...	381
Lanes and alleys may be declared to be, ...	775-782
On public highway, prohibition of and penalty for, ...	846
Townships of the first class, abatement of in, ...	381, 2059, 2060, 2061
OATH OF OFFICE, taking and subscribing to by elected and appointed officers, ...	190
OFFICERS AND EMPLOYEES, see also ELECTIONS; COMMISSION- ERS; SUPERVISORS.	
Accounts of, inspection of by State Highway Department, ...	194
Assessors,	
Compensation of, ...	367
Powers and duties of, ...	367
Rebates for forest or timber lands, duty of, to file application for, ...	1605
Rebates for forest or timber trees, Blanks for application for to be furnished to, ...	1604
Record of number of acres of forest land to be made by, ...	1605
Vacancy in office of, how filled, ...	1544
Assistant assessors, vacancy in office of, how filled, ...	1544
Assistant engineer of township highways, not to be interested in con- tracts, penalty, ...	1882
Attendance by commissioners and supervisors at conventions, compen- sation for, ...	196
Auditors,	
Advertisement of statement of township accounts, by, ...	327
Appeals from report of, ...	332-341
Attorney for, compensation of, ...	330
Attorney may be employed by, ...	330
Collection from persons charged in report of, ...	331
Compensation for attending conventions of associations of county commissioners and supervisors, ...	196
Compensation of, ...	325, 714
Duties of, ...	325, 327, 328, 330
Duty,	
To act as fence viewers, ...	1961-1963
To surcharge for neglect, ...	325
Meeting of, ...	325
Neglect or refusal by to perform duties, basis for suit for penalty, ...	329
Oaths may be administered by, ...	326
Orders and vouchers to be cancelled by, ...	328
Quorum to act, ...	325
Statement of township accounts to be filed with clerk of courts, by, ...	327
Subpoenas may be issued by, ...	326
Bonds of,	
Additional security on, proceedings, ...	1504, 1505, 1506, 1507
Township to pay premium when surety company bond is required, ...	191
Commissioners, see COMMISSIONERS.	
Constable, duty to cut and destroy Canada thistles,	
After failure of land holder to, ...	1988
Growing on mountain or unseated land, penalty, ...	1989
Duty of, in regard to roads on State boundary lines, ...	1776
Employees entering military service,	
Evidence of dependency, ...	1523

OFFICERS AND EMPLOYEES, Cont.

Sec.

Employees entering military service, Cont. *

Power of attorney to dependents to receive salary, ...	1522
Salaries payable to dependents of, ...	1522
Salaries to be paid only during life of, ...	1523
Substitutes for appointment, salary, ...	1521
Expiration of term of, when township changes to another class, ...	32
Extortion by, from travelers on public highway, penalty for, ...	845
In division of township highways of State Highway Department, ap- pointment, bond, expenses, and salary of, ...	1871, 1872
Oath of office, ...	190
Police,	
Appointment of by court, ...	355
Compensation of, ...	358, 1514, 1515, 1516
Establishment of by township commissioners, ...	381
Persons arrested by, to be received by keepers of jails, etc., ...	355
Powers of, ...	355
Secretary,	
Compensation of, ...	714
Copy of oath of township officers to be filed with, ...	190
Solicitor,	
Compensation of, ...	714
Tax lien, claim for, to be signed by, ...	1611
Supervisors, see SUPERVISORS.	
Tax collector,	
Deputy may be employed by, ...	1567
Executors of to collect taxes during life of warrant, ...	1568, 1569
Exonerations, returns for, to be made by, when, ...	1593
Forfeiture by, for failure to perform duties, ...	1579
Monthly returns,	
Penalty for failure to make, ...	1573
To be made by, ...	1572
Names, not to be added by, to duplicate, penalty for, ...	1580
Names of taxables, etc., to be kept in book by, open to public, ...	1565
Notice to county treasurer to be given by, contents of, penalty, ...	1557, 1559
Office hours of, during time discount is allowable, ...	1566
Payment over of taxes as collected, ...	1572
Penalty for failure to make, ...	1573
Power of, ...	1585
In collection of taxes, liabilities and penalties, ...	1564
Rebates for forest or timber trees to be deducted from taxes by, ..	1604
Receipt for taxes,	
Penalty for failure to furnish, ...	1571
To be furnished by, to tax payer, ...	1570
Seated lands, return of for nonpayment of taxes, additional per centage to be added to, for, ...	1591, 1592
Suit for taxes not to be brought by, during life of warrant, ...	1589, 1590
Taxes, not to be received by, from persons not assessed, penalty for, ..	1580
Unseated lands, taxes upon not to be collected by, ...	1594
Vacancy in office, how filled, ...	1554, 1555
Warrant for collection of taxes, life of, ...	1562, 1563
Town clerk,	
Penalty for asking or receiving fee for search of record of strays, ..	1978

OFFICERS AND EMPLOYEES—Cont.

Town clerk, Cont.

Strays, duty to keep record of, penalty for failure, compensation, ...	1971
Township commissioners, see COMMISSIONERS.	
Township commissioners and supervisors may form county associations	195
Township supervisors, see SUPERVISORS.	
Townships of the first class,	

Assessors,

Appointment of to fill vacancy, ...	133
Books and blank forms to be furnished to by county commis- sioners, ...	1541
Compensation of, ...	1537-1539
Duty to examine records of conveyances of real estate, ...	1548
Duty to make triennial assessment, ...	1535
Election of, ...	102, 120
Return by, of days employed in performance of duty, ...	1540
Return of triennial assessment, extension of time of making, by, ...	1542
Revision of assessments, during years between triennial assess- ments, ...	1548
Vacancy in office of, to be filled by appointment, ...	133

Assistant assessors,

Appointment of to fill vacancy, ...	133
Compensation of, ...	1537, 1539
Duty to make triennial assessment, ...	1535, 1536
Election, term, duties and compensation of, ...	120, 121
Power and duties of, ...	367
Return by, of days employed in performance of duty, ...	1540
Vacancy in office of, to be filled by appointment, ...	133

Auditors,

Accounts of treasurer to be settled by, ...	406
Appointment to fill vacancy, ...	132
Cost of collection of taxes to be adjusted by, ...	404
Election and term of, ...	102, 125
Vacancy in office of, to be filled by appointment, ...	132

Commissioners, election and term of, ... 102, 110

Constable, notice of election on question of erection of firehouse,
to be given by, ... 381

Deputy treasurers, powers of, ... 403

Disbursements to be made in by treasurer, ... 396

Election of officers when first class township is created, ... 32

Engineers, appointment of by township commissioners, ... 213

Police may arrest upon view, ... 1380

Secretary,

Duties of, ...	300, 301, 303
Election of, ...	300
Notice to property owners of assessment for planting of trees, ...	1338
Penalty for furnishing incorrect statement of funds, ...	301
Record of abated taxes to be kept by, ...	405
Record of deeds of conveyance to be kept by, ...	303
Salary of, ...	300

Supervisors, appointment of by township commissioners, ... 213

OFFICERS AND EMPLOYEES, Cont.

Townships of the First Class, Cont.

Treasurer,

Accounts of, to be settled by auditors in first class townships,	406
Appointment of deputies, by, ...	403
Appointment to fill vacancy, ...	131
Bond to be furnished by, ...	270, 275
Commissioners of, forfeited by, for failure to give notice to taxables, ...	401
Compensation of, ...	271
Cost of printing and postage incurred in collection of taxes to be retained by, ...	404
Duties of, ...	272
Duty when acting as tax collector, ...	274
Election and term of, ...	102, 115
Fines and penalties for violation of ordinances, payable to,	1353
Notice of amount of taxes due, to be given taxables, by, ..	401
Notices of receipt of tax duplicate to be given by, ...	400
Oath of, ...	275
Payment of money by, except on proper orders, penalty for,	273
Penalties,	
For non-payment of taxes to be added to taxes due, by,	402
For violation of regulations of shade tree commission, pay- able to, ...	1341
Powers of, ...	403
Separate accounts of taxes collected, to be kept by, ...	406
Vacancy in office of, to filled by appointment, ...	131

Townships of the second class,

Assessors,

Compensation of, ...	1543
Election and term of, ...	141, 160, 161
Return by, of days employed in performance of duty, ...	1543
Vacancies in office, how filled, ...	182

Assistant assessor for election duties, election of not affected by
General Township Law, ...

162

Assistant assessors,

Compensation of, ...	1543, 1546
Return by, of days employed in performance of duty, ...	1543

Auditors,

Accounts of tax collectors to be settled by, ...	431
Appointment to fill vacancy in office of, ...	151, 181
Book and accounts of board of supervisors, to be submitted to,	233
Compensation of supervisors to be determined by, ...	235
Election and term of, ...	141, 150, 151, 152
Vacancy in office of, filling of, ...	181
Eligibility to office, ...	140
Laborers on roads and bridges, compensation to be fixed by super- visors, ...	234
Officers to be elected in, ...	141
Police,	
Appointment of, ...	1508

OFFICERS AND EMPLOYEES, Cont.

Sec.

Townships of the Second Class, Cont.

Police, Cont.

Badge of, ...	1512
Compensation of, ...	1513
Number and term of, to be fixed by court, ...	1509
Persons arrested by, to be received by certain officials, ..	1511
Powers of, ...	1510

Road masters, see Superintendents or Road Masters.

Secretary,

Books of, open to inspection, ...	312
Compensation of, ...	310
Duties of, ...	310

Superintendents or road masters,

Appointment of, ...	234
Bond may be required of, ...	234
Compensation of to be fixed by supervisors, ...	234
Duties of, ...	236-241
Not to be interested in purchases or contracts relating to roads or bridges, ...	239
Records to be kept by, ...	236
Removal of, ...	234
Reports to be made by, ...	236
Subjects to rules of State Highway Commissioner, ...	236
Violation of provisions of Township Code, by, ...	240

Tax collectors,

Accounts to be settled by auditors, ...	431
All taxes to be collected by, ...	365
Bonds of, ...	366
Compensation for collection of delinquent taxes, ...	423
Compensation of, ...	427
Election and term of, ...	141, 170, 171
Expense of collection of taxes to be retained by, ...	429
Notice,	
Of amount of taxes due, to be given taxables, ...	425
Of receipt of tax duplicate to be given by, ...	424
Oath of, ...	366
Penalty for neglect or refusal to pay treasurer taxes collected,	428
Powers and duties of, ...	365
Settlement to be made by, within three months after expiration of term, ...	426
Taxes collected to be paid to treasurer, ...	426
Vacancies, how filled, ...	183

Treasurer,

Accounts to be stated annually by, ...	287
Bond of, ...	285
Books and records of, to be delivered to successor, ...	285
Compensation of, to be settled by supervisors, ...	285
Duties of, in, ...	285-287
Taxes collected for lighting purposes to be received by, ...	368
To receive taxes collected for fire protection, ...	386

▼ Vacancies, filling of, ... 180-183

OFFICERS AND EMPLOYEES—Cont.

Sec.

Treasurer,

Misappropriation of funds by, ... 260

Moneys to be applied by, only for purposes for which it was collected, ... 260

Penalty recovered from auditors for refusal to perform duties, to be paid to, ... 329

Power to issue licenses to transient merchants, ... 1262

Vacancies in office,

Declared by court for refusal or neglect to perform duties, ... 192

Filling of, when declared vacant by court, ... 192

Volunteer police during war time, ... 1517, 1520

OFFICIAL BONDS, see OFFICERS AND EMPLOYEES.

ORDINANCES, ... 1381-1385

Townships of the first class,

Enforcement of,

Appeal, when proceeding commenced by warrant, from conviction for violation of ordinance, ... 1381

Arrest on view, procedure in cases of, ... 1382

Commitment of persons arrested for violation of ordinance, 1384

Costs, failure to pay when imposed, effect of, ... 1384

Costs of proceedings and of maintenance of prisoners in county jail, payable by township, ... 1385

Fines and penalties,

Failure to pay, effect of, ... 1384

Maximum amount of, how collected, ... 1384

Payable to, ... 1383

Procedure for collection of, ... 1381, 1382, 1384, 1385

Policemen,

Power to serve process in proceedings for, ... 1381

Powers of, ... 1380, 1381

Township liable for costs of proceedings and maintenance of prisoners in county jail, ... 1385

Warrants, when returnable, ... 1381

Person arrested for violation of, right to trial and to give bail, .. 1380

Policemen may arrest upon view for violation of, ... 1380

Publication of, ... 381

Public buildings, intention to take property for, to be declared by, .. 1224

OVERSEERS OF THE POOR, duty to repair and maintain neglected cemeteries in certain districts, payment of expense of, 2120-2122

PARTITION FENCES, see FENCES.

PAVEMENTS, townships of the first class, power to survey, lay out and ordain, along turnpike roads, State highways or county roads, ... 980

PARKS, PARKWAYS AND PLAYGROUNDS, ... 1295-1317

Erection, maintenance and regulation of, ... 2041-2047

Playgrounds, playfields, gymnasiums, public baths, swimming pools and indoor recreation centers,

Acquisition of land for, ... 2041

Bonds, issuing of for acquiring lands for and equipment of, ... 2046

Joint acquisition by two or more municipalities, of property for, operation and maintenance of, ... 2045

PARKS, PARKWAYS AND PLAYGROUNDS, Cont.

Playgrounds, playfields, gymnasiums, public baths, swimming pools and indoor recreation centers,—Cont.

Payment of expenses incident to, tax levy for, ...	2047
Recreation board, appointment of, terms of, compensation, vacancies, ...	2043
Recreation board, officers of, powers and duties of, ...	2044
School districts, power to join in equipping and maintaining, ..	2045
Supervision and maintenance of, ...	2042,2043
Townships of the first class,	
Bond in condemnation proceedings,	
Effect of approval by the court, ...	1304
When and to whom tendered by township,	
condition of, ...	1303
Cemeteries, churches or schools not to be appropriated for, ...	1296
Costs,	
Incurred in condemnation proceedings to be paid by, ...	1315
Payment of where ordinance repealed or proceedings discontinued, ...	1317
Damages for taking of property for, secured by township funds,	1302
Damages in condemnation proceedings,	
Interest on amount of, ...	1316
When finally confirmed to be a judgment against township,	1316
When not payable by, ...	1317
Election,	
To determine question of acquiring property for, notice, ballot, result, ...	1299-1301
When necessary before acquiring property for, ...	1297,1298
When second is permissible to determine question of acquiring property for, ...	1301
Eminent domain, exercise of to acquire land for, ...	1296,2041
Improvement, maintenance and regulation of, ...	1295
Land outside township limits, not to be acquired for, ...	1296
Viewers,	
Appointment of, ...	1305,1306
Duties and powers of, ...	1306
First meeting, ...	1305
Notice of first meeting, ...	1307
Proceedings before, ...	1308,1309
Service of notice of, ...	1306,1307
Viewers' reports,	
Appeals from confirmation of, ...	1314
Confirmation of, ...	1312
Effect of final confirmation of, ...	1316
Filing of, ...	1309
Notice of filing of, contents of, ...	1311
Proceedings upon, ...	1310,1312-1315
PENAL PROVISIONS,	
Adding names to duplicate returns of assessors, penalty, ...	1580
Agreements with banks for use of public money for benefit, prohibition, penalty, ...	2132
Auditors, neglect or refusal of to perform duties, penalty, ...	329

PENAL PROVISIONS, Cont.

Canada thistles, failure to cut, penalty, ...	1987,1988,1989
Carrying fire over bridge, penalty, ...	920
Commissioners to prescribe penalties for violations of ordinances, ..	381
Currency, offences against by officers, prohibited, penalty, ...	2138
Cutting down, killing or injuring trees along highway, penalty, ...	1601
Driving horse, etc., over bridge faster than a walk, penalty, ...	920
Driving motor vehicle over bridge, unlawful rate, misdemeanor, penalty, ...	1923,1924
Embezzlement of public moneys, penalty, ...	2133-2135,2142
False statement by secretary of township, penalty, ...	301
Justice of the peace, failure of to make returns to Highway Depart- ment of fines and penalties, collected under Motor Vehicle Act, ...	1951
Loaning money or securities of township, prohibited, penalty, ...	2131
Persons swearing or affirming falsely on examination by auditors, guilty of perjury, ...	326
Public accounts, .	
False statements concerning, penalty, ...	2141,2142
Falsification or mutilation of, penalty, ...	2140,2142
Receipt or possession of money without entry upon, penalty, ...	2139-2142
Public contracts, interest in prohibited, suretyship by officers prohibited, penalty, ...	2136,2137
Public contracts or purchases, officers not to be interested in, ...	239
Receiving taxes from persons not duly assessed, penalty, ...	1580
Riding, leading or driving of beasts of burden upon sidewalks, penalty, collection of, ...	1931
Statute of limitations, ...	2143
Tax collector, failure of,	
To furnish receipt to tax payer, penalty, ...	1571
To make monthly returns or payment over of taxes collected, penalty, ...	1573
To make monthly settlements, penalty, ...	428
Township treasurer,	
Misappropriation by, of funds, penalty, ...	260
Neglect or refusal by, to perform duties of office, penalty, ...	260
Violation of provisions,	
Township Code, penalty, ...	240
Motor Vehicle Act, ...	1935-1958
PIG-PENS, townships of the first class, regulation of in, ...	381
PLAYFIELDS, erection, maintenance and regulation of, ...	2041-2047
PLAYGROUNDS, see PARKS, PARKWAYS AND PLAYGROUNDS.	
POLICE, see OFFICERS AND EMPLOYEES.	
POLICE AND VOLUNTEER POLICE, see OFFICERS AND EMPLOY- EES.	
PRISONERS, see TOWNSHIP PRISONERS.	
PRISONS, use of by officers, compensation for, ...	2144,2145
PROVISIONS NOT INCLUDED IN GENERAL TOWNSHIP ACT, ..	2
PUBLIC AMSEMENTS, see SHOWS.	
PUBLIC BATHS, erection, maintenance and regulation of, ...	2041-2047
PUBLIC BUILDINGS AND WORKS,	
Assessment of damages for taking of property for, by viewers, ...	1229

PUBLIC BUILDINGS AND WORKS, Cont.

Bonds,

From contractors for protection of labor and materialmen, suits upon, ... 2002,2003

In condemnation proceedings, ... 1226,1227,1228

Cemeteries, power of eminent domain does not include, ... 1223

Church, power of eminent domain does not include, ... 1223

Citizens only to be employed on contracts for, ... 2005,2006

Condemnation of land heretofore granted for other purposes, for use in erection of, ... 1228

Contracts for,

List of materials needed to accompany, ... 1236

Lowest responsible bidder to be awarded, ... 1235

When separate for plumbing, heating, ventilating and electrical work, ... 1235

Contractors on, to accept provisions of Workmen's Compensation Act, ... 1999,2000,2001

Costs of proceedings, etc., acquisition of, payment of, for, ... 1233

Damages awarded in condemnation proceedings, payment of, ... 1234

Eminent domain,

Power of, for erection of townhouse, hose house, lockup and other necessary buildings, ... 1222

Procedure in, ... 1222-1234

Flags on public buildings, ... 2007, 2008

Hose house, power of eminent domain for erection of, ... 1222

Intention to take property for, to be declared by ordinance, ... 1224

Jury trials, demand for, in condemnation proceedings, ... 1232

Lockup, power of eminent domain for erection of, ... 1222

Performance of work upon, within territorial limits of township, right to provide for, ... 1997,1998

Plumbing, heating, ventilating and electrical work in, separate bids for, 1235

Power to condemn property for, procedure, ... 1222-1234

Regulation and construction of buildings by township commissioners, 381

Schools, public or parochial, power of eminent domain, does not include, 1223

State Art Commission,

Annual report of, ... 1995

Appointment and compensation of, ... 1990,1991

Approval by, of public buildings and memorials, ... 1994

Clerks and assistants, appointment and compensation of, ... 1993,1996

Rules of procedure, authority to adopt, ... 1992

Townhouses, power,

Eminent domain for erection of, ... 1222

To borrow money for erection of, ... 1221

To procure ground for and erect, ... 1220

Townships of the first class,

Inspection of construction, repair of, provision for, ... 2004

Regulations for construction and repair of buildings to be made by ordinance, penalties, ... 2004

Townships of the second class, lockups, erection of by supervisors after election, ... 1250

Validation of ordinances, regulations or contracts providing for work on, to be done within territorial limits of township, ... 1998

Viewers in condemnation proceedings,

Appeals from reports of, demand for jury trial, ... 1232

PUBLIC BUILDINGS AND WORKS, Cont.

Sec.

Viewers in condemnation proceedings, Cont.

Appointment, powers and duties, and report of, ...	1229-1231
Workmen's Compensation Act, provisions of to be accepted by contractors on, ...	1999,2000,2001

PUBLIC HEALTH,

Bone boiling establishments, conduct and supervision of, ...	2098
Communicable diseases,	

Attendance at certain places, of children suffering from, prohibited, ...	2071-2073
---	-----------

Bedding, clothing, etc., lending, selling and transmitting of, ...	2082
---	------

Blanks to make reports of, to be furnished by health authorities, ...	2077
---	------

Bulletins containing names, etc., of persons suffering with certain diseases, to be issued by authorities, ...	2078
--	------

Burial of bodies of persons dying from, ...	2085-2090
---	-----------

Children and other persons residing in certain premises may be permitted to leave under certain conditions, ...	2074
---	------

Children and other persons suffering from, not to attend certain places, ...	2071-2073
--	-----------

Children to be removed from schools in certain cases, ...	2075
---	------

Churches and public halls, etc., bodies of persons dying from, not to be taken to, ...	2088
--	------

Conveyance of bodies from home to cemetery, ...	2090
---	------

Conveyances at funerals, ...	2089
--------------------------------	------

Defined, ...	2067
----------------	------

Department of Health, power of to declare other than those set forth in act, as, ...	2067
--	------

Penalties for violations of acts relating to, ...	2092
---	------

Persons suffering from, not to expose themselves, ...	2081
---	------

Physicians, duty to report to health authorities, ...	2067
---	------

Quarantine of premises and persons, placard, ...	2068,2069
--	-----------

Quarantine, period of, ...	2039
------------------------------	------

Re-admission to schools of children excluded, ...	2076
---	------

Removal of suspected cases from schools, reports by persons in charge, ...	2075
--	------

Renting rooms, houses, etc., prohibited until after disinfection, ...	2083
---	------

Reports of suspected cases, by persons in charge of schools, ...	2075
---	------

Reports of State Department of Health by local health authorities, ...	2091
--	------

Rules and regulations with regard to, power of health authorities to adopt, ...	2084
---	------

Services at burials to be private, ...	2087
--	------

Vehicles carrying persons suffering with, disinfection of, ...	2080
--	------

Cost of maintenance of person contracting disease in township without settlement therein, cost of, ...	2093
--	------

Persons contracting infections or contagious disease in township before gaining settlement, treatment of, payment of expense of, notice, ...	2093
--	------

Quarantines of premises in which communicable disease exists, ...	2068-2070
--	-----------

Rubbish and waste materials,

Interfering with receptacles containing, prohibited, penalty, ..	2099
--	------

Throwing of, on any street prohibited, penalty, ...	2099
---	------

Spitting,

Arrests, power to make for violation of act, ...	2104
--	------

PUBLIC HEALTH—Cont.

Sec.

Spitting—Cont.

Penalties for violating act, ...	2102, 2103
Prohibited in certain places, ...	2100
Receptacles, cleaning of, ...	2101
Signs warning public, posting of, ...	2101

State Department of Health, regulation by, of bone boiling establishments, ...	2098
--	------

Township of the first class.

Abatement of nuisances, prejudicial to health, in, ...	381, 2059, 2060
--	-----------------

Administration of health laws by Commissioner of Health of State, when permitted, ...	2063
---	------

Board of Health,

Appointment of and number of members, ...	2055
Appropriations to, ...	2062
Blanks to report communicable disease, to be furnished by, ...	2077
Bond of secretary and health officer, ...	2056

Bulletins containing names, etc., of persons suffering with diseases, issuing of, ...	2078
---	------

Commissioner of Health of State, when empowered to administer laws, in townships, ...	2063
---	------

Entering of premises, by, ...	2060
---------------------------------	------

Establishment of, ...	2054
-------------------------	------

Expenditures, annual estimate of, ...	2062
---	------

Expenses of, and of commissioner, how paid, how collected from township, payment, ...	2064-2066
---	-----------

Health officer,

Election of, ...	2056
--------------------	------

Powers and duties of, ...	2058
-----------------------------	------

Nuisances, abatement of, ...	2059-2061
--------------------------------	-----------

Oath of members, ...	2056
------------------------	------

Organization of, ...	2056
------------------------	------

Powers and duties of, ...	2059, 2061
-----------------------------	------------

President, election of, ...	2056
-------------------------------	------

Quarantine, removal of, disinfecting premises, ...	2058, 2079, 2080
--	------------------

Recovery by, from persons taken sick, of cost of maintenance, ...	2094
---	------

Reports,

To be made by secretary, ...	2057
--------------------------------	------

To commissioners, ...	2062
-------------------------	------

To State Department of Health by, ...	2091
---	------

Rules and regulations,

Power to adopt, effect of, penalty, ...	2059
---	------

With regard to communicable diseases, power to adopt, ...	2084
---	------

Salaries, members of, not to receive, except secretary, ...	2055
--	------

Salaries of secretary and health officer, ...	2056
---	------

Secretary,

Duties of, ...	2057
------------------	------

Election of, ...	2056
--------------------	------

Terms of office, ...	2055
------------------------	------

Of secretary and health officer, ...	2056
--	------

Cess pools, regulation of, ...	2059
----------------------------------	------

PUBLIC HEALTH—Cont.

Townships of the First Class,—Cont.

Communicable diseases,

Disinfecting premises, ... 2058, 2079, 2080

Health officer, duty,

To disinfect premises, ... 2058

To placard quarantined premises, ... 2054

Establishment of board of health, ... 2059

House drains, regulation of, ... 2059

Soil pipes, regulation of, ... 2059

Wash pipes, regulation of, ... 2059

PUBLIC LIBRARIES,

Appropriations and contributions to be disbursed by Board of Library

Directors, ... 2027

Appropriations to establish and maintain, power to make, limit, 2014, 2023, 2025

Board of Library Directors,

Annual report, ... 2027, 2028

Appointment of, ... 2016

Audit of accounts of treasurer, ... 2027

Bond of treasurer, ... 2021

Control of all money raised, ... 2017, 2019, 2027

Control of library, ... 2016, 2020

Number of directors, ... 2020

Organization of, officers, election of, ... 2021

Rules and regulations, power to adopt, ... 2030

Salaries, none to receive, ... 2020

Terms of directors, ... 2020

Treasurer, audit of accounts of, ... 2027

Vacancies, filling of, ... 2020

Bonded indebtedness, election on question of creating, ... 2037

Branches, deposit station, and traveling libraries, ... 2029

Contracts with existing non-sectarian libraries, terms of contract, renewal, ... 2024

County system, township may become part of, ... 2026

Eminent domain, exercise of, to acquire private property for, ... 2034-2036

Existing free, public libraries, public aid to, ... 2032

Gifts of real and personal property, ... 2031

Joint libraries, agreements to establish and maintain, ... 2022, 2026

Lands and buildings for, purchase of, power to set apart for, ... 2033

Maintenance of, when established by popular subscription, ... 2019

"Municipal Authorities" defined, ... 2013

"Municipality" defined, ... 2012

Non-residents, use of, by, ... 2030

Penalties for violation of act, ... 2039

Popular subscriptions for establishment of, limit and payment of, ... 2018

Purchase of lands and buildings for, ... 2033

Submission of question of establishing, to vote, ... 2015

Subscriptions for establishing may be accepted, limit, payment of, .. 2018

Tax,

Levy and collection of,

After vote, ... 2016, 2017

For maintenance when established by popular subscription, .. 2019

PUBLIC LIBRARIES, Cont.

Tax, Cont.

Sec.

Levy of,	
By counties, ...	2026
Without submission to vote, ...	2017
Levy to be made annually unless vote taken, ...	2017
Question of establishing annual, submission to voters, ...	2015
Taxation,	
Exemption of buildings and lands from, ...	2038
Gifts, devises, grants and endowments to, exempt from collateral inheritance tax, ...	2038
Taxes to establish and maintain, power to levy special, ...	2014
Traveling libraries, ...	2029
Use of existing library by municipality, contract for, ...	2024
When no new public library shall be established, ...	2032

RAILROADS AND RAILWAYS,

Contracts of, with townships of the first and second class, ...	1160-1165
Exclusive franchises for use of streets, enforcement of contract for, ..	1163
Franchises, powers, duties and liabilities: regulation of by contract, ..	1161
Laying and relaying tracks, ...	1164
Relocation, change or elevation of roads, ...	1160
Removal and laying of tracks, change of route, ...	1162

RAM, see STRAYS.

REAL ESTATE, conveyances of in first class townships to be entered of record by town clerk, ...	1547
---	------

RECORDS,

Inspection of,	
By State Highway Department, ...	194
In townships of the first class, ...	302

ROADMASTERS, see OFFICERS AND EMPLOYEES.

ROADS, STREETS AND HIGHWAYS,

Acceptance of those dedicated to public use in townships of the first class, ...	525
Accounts of expenditures on,	
Books and forms for, to be supplied by State Highway Department, ...	1880
Method of keeping, to be prescribed by State Highway Department, ...	1880
Alleys, see Lanes and Alleys.	
Altering and widening of those connecting municipal corporations, damages for, ...	1796
Alteration and relocation of those leading to parks and public grounds vested in the State, procedure for, damages for, ...	1797-1801
Assessment of property outside limits of township for street improvement, ...	820
Barriers along precipices, erection and maintenance of, by county, proceedings for, ...	1807
Bulletins of instruction to be furnished by State Highway Department to supervisors, ...	1878
Canada thistles, duty of supervisors to cut and destroy when growing along, ...	1989
Change, or vacation of roads by bridge viewers, ...	1884, 1887, 1888
Change or alteration of without view, ...	685, 686

ROADS, STREETS AND HIGHWAYS, Cont.

Changing or altering by agreement with property owners, ...	685
Limit of expense to township in, ...	686
Map or draft shall accompany petition for, ...	686
Closing of,	
Before new road opened, forbidden, ...	1785
To travel,	
Detours, maintenance of, ...	1851
Duty of authorities in, ...	1850, 1851
Coal tipples on, regulation and control of by State Highway Department, ...	727
Commissioners, notice to, of views and reviews of roads, ...	1728
Complaint of citizens as to condition of,	
Appointment of examiners, ...	193
Security for costs of examination of roads, ...	193
Connecting municipal corporations,	
Altering and widening of, damages for, ...	1796
Widening and altering of, damages for, ...	1796
Construction and maintenance of by county, ...	1803
Township authorized to assist in, ...	1811-1814
Contracts,	
Assistant engineer of township highways, not to be interested in, penalty, ...	1882
For maintenance of, not abrogated by transfer of road to State, ...	1820
Of supervisors, approval of by township commissioner of State Highway Department, ...	1873, 1875
With tax payers for opening and repairing of, ...	710-716
Bond to be given by tax payer to secure township, ...	712
Contents and obligations of, ...	714
Court may authorize, ...	714
Exemption from road tax, in cases of, ...	715
Petition by tax payer to court to secure, ...	711
Powers and duties of commissioners and supervisors, in cases of, ...	716
Notice of petition and bond to township officers, ...	713
Salaries of officers of township, payment of in case of, ...	714
Convict labor on, ...	1860-1869
Commutation of sentence for, ...	1867
Definition of terms in act, ...	1860
Detail of convicts for, by jail warden, ...	1861
Disbursements and expenditures for, ...	1869
Not to be employed in, skilled labor, ...	1868
Remuneration to convicts for, ...	1864
Payment of to dependents, ...	1865
Request for convicts for, ...	1861
Rules and regulations for convicts at, ...	1862, 1863
Supervision of work, ...	1866
County commissioners, authority of to lay out, relocate, straighten, widen, extend, alter and open township roads, ...	1802, 1803
County roads,	
Control, repair and maintenance of, ...	1803, 1804
Conversion of township roads into, ...	1803

ROADS, STREETS AND HIGHWAYS, Cont.

Sec.

County roads, Cont.

Township may assist in construction and maintenance of, ...	1811-1814
Vacation of, ...	1805
To make them township roads, ...	1794
When vacated to become township roads, ...	1805
Damages and benefits for laying out, widening, changing or vacating of certain, general road law to apply to, ...	640
Dedicated to public use, acceptance of by commissioners in townships of the first class, ...	525
Detours,	
Erection and removal of signs indicating, ...	1851
When authorized, maintenance of, ...	1851
Ditches and drains,	
Authority of supervisors and commissioners to enter upon private lands for supervision of, ...	699
Penalty for interfering with, ...	699
Division of township highways in State Highway Department,	
Engineer, appointment, bond, expenses and salary of, ...	1871, 1872
Establishment of, ...	1870
Officers and employees in, appointment, bond, expenses and salary of, ...	1871, 1872
Township commissioners,	
Powers and duties of, ...	1873-1875
To be in charge of, ...	1870
Entry on private property to secure road material and to open ditches and drains, ...	695-699
Determination of value of materials, ...	696
Procedure for, ...	697, 698
Extortion from travelers on, prohibited, penalty, ...	845
Fences along, ...	750, 761
Forming boundary lines, property in adjoining municipality liable for improvement of, ...	820
Glass, metal or refuse not to be thrown on, penalty for, ...	1858, 1859
Grades of highways, certain changes in, at drains and culverts, prohibi- ted, ...	810
Guide posts and index boards, see also Sign Boards,	
Contents of, ...	735
Erection of,	
At intersections of highways, ...	735
At intersection with State highway, ...	735
Definition of certain, ...	738
Penalty for violation of provisions relating to, ...	739
Supervisors and commissioners liable for failure to maintain, ...	736
Unlawful to destroy, remove, injure or deface, ...	737
Improvement and maintenance of by county, proceedings for, ...	1806
Improvement of those forming boundary lines, property in adjoining municipality, liable for, ...	820
In townships of the first class,	
Acceptance of those dedicated to public use, ...	525
Commissioners, consent and approval of for laying out, opening, etc., of roads, ...	1729
Dedicated to public use, acceptance of by commissioners, ...	525
Employment of workmen on, ...	213

ROADS, STREETS AND HIGHWAYS, Cont.

In townships of the first class,—Cont.

Grading, curbing, paving, macadamizing boundary streets, ...	600-602
Agreements with adjoining boroughs for, ...	600
Costs and expenses of, method of ascertaining, ...	602
Expenses of, division of between township and adjoining borough, ...	600
Petition of abutting property owners required for, ...	601
Grading, paving, curbing, macadamizing or otherwise improving connecting streets, additional widths of State highways, ...	585-587
Cost and expense of, collection of, ...	587
Ordinances for and notice thereof, ...	586
Grading, paving, curbing, macadamizing, or otherwise improving streets upon petition of a majority of property owners, ...	550-565
Appointment of viewers to assess damages and benefits, ...	553
Costs of proceedings in township, liable for, ...	559
Damages and benefits,	
Appeals from report on, ...	565
By tax payer on behalf of township, ...	565
Not to prevent filing of liens for, ...	563
To common pleas court, ...	561
To Superior or Supreme Court, ...	562
Apportionment of, ...	557
Assessment of by viewers, ...	554
Collection on lien for, not to be defended by matters of exception and appeal, ...	565
Confirmation of report on, ...	560
Costs on appeal from report on, ...	561
Exceptions to report of viewers on, ...	560
Interest payable on, ...	564
Modification by court of report of viewers on, ...	560
Notice,	
Of report on, ...	558
To property owners of assessment of, ...	555
Report of viewers on, assessment of, ...	556
Report on, conclusive when confirmed, ...	564
Tax payers may intervene in proceedings on behalf of township, ...	565
Majority,	
Based upon length of abutting lines, ...	550
Determined by court, ...	552
Determined by date of petition, ...	551
Notice,	
By viewers of meeting for assessment of damages and benefits, ...	553
Of petition and ordinance to property owners, ...	551
Viewers,	
Duties of, ...	553-556
Time of appointment of, ...	559
Laying out and establishing grades, and grading, paving, con- structing and repairing roads, at public expense, ...	525

ROADS, STREETS AND HIGHWAYS, Cont.

In townships of the first class,—Cont.

Laying out, opening, widening, straightening, vacating and relaying of,	
Authority of commissioners upon petition of property owners,	495
Commissioners have authority for, upon petition of property owners, ...	495
Commissioners to make report on, ...	498
Damages,	
Exceptions to and appeals from assessment of, ...	508
For property taken or injured by, ...	502-508
To abutting owners, ...	504
Damages and benefits,	
Division of, ...	507
Exception to assessment of, ...	505
Notice of, assessment of, ...	505, 506
Exceptions and appeals from, award of damages for, ...	508
Exceptions to report on, ...	499
Extension of streets of adjacent cities or boroughs, ...	511
Grade, change of, to be considered in fixing damages, ...	503
Notice,	
Of assessment of damages and benefits, ...	505, 506
Of meetings for, to be given to property owners, ...	497
Of ordinance for, ...	509
Of view, ...	501
Ordinances for, notice of passage or approval, ...	509
Petition for review of proceedings, ...	499
Prohibited in certain places, ...	496
Report,	
Of commissioners on, to contain draft or survey, ...	498
Of commissioners to be filed in court, ...	498
Of viewers to show grades, ...	503
Resolution of commissioners required, filing of, ...	1729
Review of proceedings of commissioners on, ...	500-508
Vacation of streets, lanes and alleys, unopened, for thirty years, ...	512
Viewers, duties of, ...	502-507
Width of road fixed, ...	510
Witnesses may be summoned and examined at meetings for, ...	497
Lights, establishment of, along, ...	381
Paving upon petition of two-thirds of property owners, ...	535-538
Assessment of two-thirds of costs and expenses of, upon abutting property, ...	536
Costs and expenses,	
Collection of from abutting property, ...	537
Two-thirds to be assessed upon abutting property, ...	536
Owner of abutting property, notice to, of assessment of, costs and expenses, ...	537, 538
Plans of streets, ...	626, 627
Approval of by commissioners required before recording, ...	626
Damages for improvements within lines of, not allowed, ...	625

ROADS, STREETS AND HIGHWAYS, Cont.

Sec.

In Townships of the First Class—Cont.

Plan of Streets,	
Filing of in office of engineer, ...	625
Penalties for violations of regulations, ...	627
Streets or alleys on, not to be altered without consent of commissioners, ...	625
Subdivisions of property to conform thereto, ...	625
Reports relative to, to be made to State Highway Department by township commissioners, ...	214
Tools, implements and machinery for use on, to be purchased by township commissioners, ...	381
Township aid in improvement of county roads, ...	610- 615
Agreement with county commissioners for, ...	610
Apportionment of cost between county and township, ...	611
County to keep road in repair, ...	611
Costs of,	
Assessment of according to benefits, ...	615
Assessment of according to foot-front rule, ...	614
May be assessed upon abutting real estate, ...	612
Only when owners petition for improvement, ...	613
Permits to public service corporations for operations under,	611
Township ordinance for, provisions of, ...	610, 611
In townships of the second class,	
Bond to be given by contractor for road work, ...	237
Contracts for work and machinery to be approved by State Highway Department, ...	386
Care, maintenance and repair of, ...	230, 236, 237, 241
Improvements and repair of, for definite time by contract, ...	237
Lights, establishment of, along, ...	386
Material and machinery for use on, to be purchased by supervisors, ...	386
Reports relative to, to be made to State Highway Department by supervisors, ...	238
Rewards for construction of, ...	432- 435
Withholding of, for neglect of supervisors to observe rules of Highway Department, ...	437
Supervision of, in hands of township supervisors, ...	230
Supervisors to have charge of, ...	230
Lanes and alleys declared nuisances by board of health or health authorities, ...	775- 782
Appointment of viewers to vacate, ...	776
Petition to court by adjacent property owners for vacation of, ..	775
Vacation of,	
Appeal to court from report of viewers on, ...	780
Costs, damages and expenses of, to be paid by township, ...	781
Exception to report of viewers on, ...	779
Notice of filing report of viewers on, ...	778
Procedure for, ...	775- 782
Prohibited in certain cases, ...	782
Laying out,	
Appeals from assessment of damages to property caused by,	
Affidavits and signature to, ...	1755, 1757
Time and notice of, ...	1754, 1756

ROADS, STREETS AND HIGHWAYS, Cont.

Sec.

Laying out,—Cont.

Appointment of viewers for purpose of, ...	1726
Benefits to be considered in assessment of damages for, ...	1752
By supervisors and commissioners in certain townships,	
Appeal and certiorari on proceedings in, ...	1765-1767
Assessment for use of private road, ...	1764
Assessment of damages to property, caused by, ...	1761,1762
Damages to property caused by,	
Appeals from assessment of, time and notice of, ...	1754,1756
Award to include damages due to grade, ...	1750
Benefits to be considered in assessments of, ...	1752
Confirmation of report of viewers on, ...	1741,1742
Expiration of claim for, ...	1748
Payment of by county, ...	1749
Petition and view to assess, ...	1747,1748
Proceedings to enforce payment of award, ...	1742
Provisions of act to apply to roads opened under special acts, ...	1753
Time for confirmation of report of viewers on, ...	1743
Time within which petitions for assessments are to be present- ed, ...	1747,1748
Viewers to secure release of, or to assess, ...	1738
When new road on dividing line between townships, ...	1788
Expenses of view, liability for, ...	1751,1759
Grade of new road, ...	1739
Notice of proceedings for, to supervisors and commissioners, ...	1728
Of private roads, ...	1768
On division line between townships,	
Costs and expenses of, ...	1788
Proceedings, ...	1789
Damages to property caused by, ...	1788
Number of viewers on, ...	1790
Opening of through burial grounds and cemeteries, forbidden, ..	1736
Plan of grades to accompany report on assessment of damages for, ..	1750
Proceedings to be recorded, ...	1745
Report of viewers,	
Confirmation of, ...	1741,1742
Contents of, ...	1739
On assessment of damages caused by, ...	1749
To include damages due to grade, ...	1750
To include plan of grades, ...	1750
Plot or draft to accompany, ...	1739
Time for confirmation of, ...	1743
Time for making, ...	1739,1740
Re-views, application for, ...	1758
Surveyor, to be supplied on all views and reviews, ...	1731
Terminus of new road need not be in public highway, ...	1733
Viewers,	
Duty of, ...	1735,1738
Number of, ...	1732
Number required to act, ...	1737
Oath of, ...	1734

ROADS, STREETS AND HIGHWAYS, Cont.

See.

Laying out, Cont.

Viewers, Cont.

Qualifications of, ...	1730,1732
Report of on damages to property, ...	1738
Width of road to be fixed by court, ...	1745
Laying out, alteration and vacation of by county commissioners, ..	1802,1803
Laying out, altering and vacating of those on dividing line of two adjoining counties,	
Appointment of joint board of viewers by courts of the two counties,	1727
Courts of the two counties to have concurrent jurisdiction, ...	1737
Laying out and opening of those leading to driving parks, fairgrounds, etc., ...	760- 763
Damages to private property in, ...	760
Procedure for collection of, ...	762, 763
Who liable for, ...	761
Fences along, ...	761
Petitions to commissioners or supervisors for, ...	760
Laying out of certain, general road law to apply to, ...	640
Laying out of in townships under special laws,	
Assessment for use of private road, ...	1764
Damages to property caused by, assessment of, procedure, ...	1761,1762
Leading to parks and public grounds vested in the State,	
Maintenance and repair of when altered or relocated, ...	1800
Vacation, alteration and relocation of, procedure for, damages, 1797-1801	
Local or special laws, effect of, repeal of, ...	1763
Notice, to supervisors and commissioners, of views and reviews of roads, ...	1728
Nuisances on, prohibited, penalty for, ...	846
Obstructions on,	
Prohibited, penalty for, ...	846
Regulation and control of by State Highway Department, ...	727
On dividing line between city and township,	
Improvement of at joint expense, ...	1808-1810
Proceedings to divide expense of improvement of, ...	1810
Opening and repairing of, ...	660
Damages due to grade, ...	1750
Opening, repairing and improving of, on boundary line of township, ..	670
Cost and expense, division of, ...	674
County may pay portion of expense of, ...	672
Payment of expenses of, ...	670
Penalty on officials for neglect or refusal to join in, ...	671
Plans and specifications for, ...	673
Pipes under and on, regulation and control of by State Highway Department, ...	727
Plans and specifications to be furnished by State Highway Department to supervisors, ...	1878
Procedure when officials of one township fail to join in, ...	671
Poles on, regulations and control of by State Highway Department,	727
Private roads,	
Damages to property for opening of, ...	1774,1775
Gates on, ...	1770-1772
Laying out of, ...	1768
Opening, fencing and repair of, ...	1773

ROADS, STREETS AND HIGHWAYS, Cont.

Private roads, Cont.

Participation in use of, ...	1775
Width of, ...	1769

Railroad crossings,

At grade prohibited, ...	725
Control and regulation of,	

By Public Service Commission, ...	726
-------------------------------------	-----

Construction of by State Highway Department, ...	727
--	-----

Damages to property in construction of, to be fixed by Public Service Commission, ...	726
---	-----

Railroads and street railways on, construction of regulated by State Highway Department, ...	727
--	-----

Refuse not to be thrown on, penalty for, ...	1858,1859
--	-----------

Reports as to amount expended for maintenance of, to State Highway Department, ...	238
--	-----

Roads on State boundary lines, duty of township officers pertaining to, ...	1776
---	------

Sign boards, see also Guide Posts and Index Boards.

Description of those included in the act, ...	1857
---	------

Erection and maintenance of, on State-aid highways, ...	1845
---	------

Erection and removal of those indicating detours, ...	1851
---	------

Injury, removal, defacing or destroying of, prohibited, penalty, ..	1856
---	------

Snow drifts on, protection of highways from, ...	750
--	-----

State-aid highways,

Authority to incur indebtedness for reconstruction of, ...	1824,1827
--	-----------

Contract for construction of, township may bid for, ...	1841
---	------

Construction of where portion lies in a borough or incorporated town, ...	1840
---	------

Damages to property for taking land in altering, location of, proportion to be paid by township, ...	1842
--	------

Definition of, ...	1844
----------------------	------

Funds allotted to county and not used to revert to State-aid fund, ...	1837
--	------

Improvement and maintenance of,

Agreement with State Highway Department for, ...	1836
--	------

Contract for reimbursement to county for cost of, ...	1847
---	------

Indebtedness and bond issues for, ...	1848,1849
---	-----------

Petition by property owners against, ...	1835
--	------

Petition by property owners to township officials for, ...	1833,1834
--	-----------

Petition by township officials for State-aid, ...	1832,1849
---	-----------

Petition for when by county and township jointly, ...	1849
---	------

Proceedings to compel action by township officials for, ..	1833,1834
--	-----------

Proportion of expense to be paid by township, ...	1831,1832,1839
---	----------------

Proportion of expense to township, payment and collection of, ...	1843
---	------

Minimum length and width of, ...	1838
------------------------------------	------

Plan of, information for, to be furnished by township officials, ..	1846
---	------

Sign boards to be erected and maintained at cross roads on, ...	1845
--	------

Township may bid for contract for construction of, ...	1841
--	------

State highways,

Authority to incur indebtedness for reconstruction of, ...	1824,1827
--	-----------

Certain roads to become, ...	1821
--------------------------------	------

Completion of improvements on by township before transfer to State, ...	1820
---	------

For repair by street railway or other corporation not abrogated	
---	--

ROADS, STREETS AND HIGHWAYS, Cont.

	Sec.
by transfer to State, ...	1820
With township for reconstruction or improvement of, ...	1823
State highways, Cont.	
Contracts,	
Improvement and maintenance of,	
Contract for reimbursement to county for cost of, ...	1847
Indebtedness and bond issues for, ...	1848,1849
Petition for, when by county and township jointly, ...	1849
Reconstruction and improvement of, share of cost on township, ...	1826,1827
Repair and maintenance of, ...	1821,1822
Widening of, authority of township to assist in payment of, ...	1829,1830
Work on to be done under contract, ...	1825,1828
State rewards to townships of second class,	
Payment of, ...	1876,1877
Withheld for failure to furnish statement of expenditure, ..	1879
Statement of expenditure of, penalty for failing to make, ...	1879
Supervisors,	
Authority of in vacation, alteration and relocation of roads, lead-	
ing to parks and public grounds, vested in the State, ..	1797-1800
Notice to of views and reviews of roads, ...	1728
Surveyor,	
One to be on each jury of views or reviews, ...	1732
To be supplied on all views and reviews, ...	1731
Throwing of glass, metal or refuse on, prohibited, penalty, ...	1858,1859
Toll-roads,	
Acceptance of as township roads, ...	1819
Contributions by township to purchase price, ...	1817
Townships of second class entitled to State rewards, ...	1876,1877
Trees or shrubbery within limits of, cutting of, ...	1830-1835
Agreement with abutting property owners, for, ...	831
Appeal to court of common pleas when consent of abutting prop-	
erty owners cannot be obtained, ...	831
Brush and refuse may be cleared away, ...	833
Penalty for violations of provisions relating to, ...	834
Removal of fallen trees, ...	835
Would obtain from, to be surrendered to abutting property owners,	832
Turnpikes,	
Acceptance of as township roads, ...	1819
Capital stock in,	
Assessment of tax for purchase of, ...	1816
Dividends on, to be expended on repair of highways, ...	1816
Election to decide on purchase of, by township, ...	1816
Supervisors authorized to subscribe for on approval of citizens,	1815
Maintenance and repair of those abandoned by county, ...	1818
Supervisors authorized to subscribe for capital stock in, on ap-	
proval of citizens, ...	1815
Upon and along dividing lines of adjoining counties, laying out, alter-	
ing and vacating of, ...	1727
Vacation,	
Application by petition for, ...	1777
By county commissioners, ...	1803
Confirmation of report of viewers on, ...	1741

ROADS, STREETS AND HIGHWAYS, Cont.

Vacation,—Cont.

Damages to property owners, when no land taken, ...	1795
Easements in streets to terminate in five years after, ...	1792
Jurisdiction of court, ...	1780-1783, 1786, 1793
Not to be closed until new road opened, ...	1785
Of county roads, ...	1793
Of public and private, ...	1780
Of roads in townships of first class, ...	1729
Of roads on dividing lines of two adjoining counties, ...	1727
Of State roads, ...	1781, 1782
Of those existing by prescription or lapse of time, ...	1780
Of those laid out and confirmed, but not opened, ...	1778
Of those laid out and opened in part, ...	1779
Of those leading to parks and public grounds vested in the state, procedure for, ...	1797, 1801
On division line between townships, ...	1786-1790
Supplying new road for, ...	1787
Petition for, contents of, ...	1784
Roads exempt from jurisdiction of court, ...	1780, 1783
Suits for to be brought within five years, ...	1791, 1792
Surveyor to be on jury of view, ...	1732
Viewers, certain persons not eligible as, ...	1782
Vacation and changing of, certain, general road law to apply to, ...	640
Views,	
Appointment of to assess damages for opening roads, ...	1747, 1748
Appointment of to lay out, ...	1726
Compensation of, ...	1744, 1760
Number of, ...	1732
Oath of, ...	1734
Qualification of, ...	1730, 1732
To make report to court at next term after appointment, ...	1726
Views and reviews,	
Notice of to supervisors and commissioners, ...	1728
Surveyor to be supplied by applicants for, ...	1731
Watering troughs,	
Chartered societies maintaining, to publish statement of expendi- tures for, ...	1852
Erection and maintenance of along highways, ...	1852
Compensation for, ...	1852
Penalty for injury or destruction of, ...	1854
Pumps to supply water to, compensation for, ...	1853
Specifications for, ...	1852
Supplying water to by pump, compensation for, ...	1853
Those already erected to have preference, ...	1855
Widening and altering of those connecting municipal corporations, damages for, ...	1796
Widening of certain, general road law to apply to, ...	640
RUBBISH AND WASTE MATERIALS, see PUBLIC HEALTH.	
SECRETARY, see OFFICERS AND EMPLOYEES.	
SECOND CLASS TOWNSHIPS, see also SUPERVISORS.	
Corporate power of, vested in township supervisors, ...	386
Powers of, ...	385

	Sec.
SETTLEMENT, how gained in township.	2095, 2096, 2097
SEWERS AND DRAINS,	
Acquisition of existing system of, ...	1932
Proceedings to ascertain price to be paid, ...	1933, 1934
Joint sewers,	
Approval of plans for, by State Department of Health, ...	1141
Power of townships to contract for construction or maintenance of, ...	1140
Purchase of, existing system of, by township from private owner, ...	1932
Townships of the first class,	
Condemnation of land for sewer or disposal purposes,	
Appeal to Supreme or Superior Court from final confirmation of report or verdict of jury, ...	1076
Damages,	
County roads vacated to become township roads, ...	1794
Awarded, entered as verdict, collection of, ...	1077
Liability for, ...	1073
Jury trial, ...	1076
Procedure for, ...	1073-1077
Viewers,	
Appeal from report of, ...	1076
Appointment of, to assess damages, notice of meeting of, ...	1074
Confirmation of report of, ...	1076
Duties and report of, ...	1075
Exceptions to report of, ...	1076
Connection with existing sewers of other municipalities,	
Petition to court for, ...	1126
Power to make, ...	1125
Viewers,	
Appointment and duties of, ...	1127
Reports of, filing and confirmation of and appeals from, ...	1128
Construction and maintenance of, by individuals or corporations under contract with commissioners, ...	1095
County highways,	
Collection of cost of construction of sewers, etc., in and under, ...	1116
Power to construct sewers, etc., in and under, ...	1115
Delegation of power to construct and maintain in, to individuals or corporations, ...	1095
Disposition of sewage, ...	1072
Contracts with other municipalities or corporations, for, ...	1072
Purchase or condemnation of property outside township, for, ...	1072, 1073
General fund, amounts not legally chargeable upon properties, payable out of, ...	1080
In streets or alleys or over private property, costs, damages and expenses, procedure for assessment and collection of, ...	1105
Monthly or annual rate for use of, to be prescribed by ordinance, ...	1070
Power to establish and construct, ...	1070, 1071, 1105
Power to locate and construct through private lands, ...	1071, 1073
Property owners benefited by, to be charged with cost of construc- tion of, ...	1078-1085
Assessments of cost payable to township treasurer, notice of, ...	1084

SEWERS AND DRAINS, Cont.

Sec.

Townships of the First Class.—Cont.

Property owners benefited by, to be charged with cost of construction of,—Cont.

By assessment,

In proportion to benefits, procedure for, ... 1081-1083

In proportion to frontage, ... 1081

Procedure, ... 1081-1085

Viewers,

Appeals from and exceptions to reports of, ... 1083

Appointment of to assess benefits accruing, ... 1082

Confirmation of report of, ... 1083

Duties and report of, ... 1083

Notices of proceedings before, payment of cost of, ... 1085

Reports of, appeals to Supreme or Superior Court, ... 1083

Property owners may be required to connect with and use, ... 1070

Rental for use of sewer to constitute a lien, ... 1070

Sewer districts, apportionment of costs of system among, ... 1079

State highways,

Collection of cost of construction of sewers, etc., in and under, ... 1116

Power to construct sewers, etc., in and under, ... 1115

Taking over of, by commissioners after construction by individuals or corporations, ... 1095

SHADE TREES, ... 1330-1341

Townships of the first class,

Cost and expense of caring for,

Payment of, ... 1339

To be certified to commissioners annually, by Shade Tree Commission, ... 1339

Cost of planting, etc.,

Collection of when certified to commissioners, ... 1338

Payment of, ... 1337

Shade Tree Commission to certify to commissioners and treasurer, ... 1337

Park Commission,

Notice of meeting to consider work concerning trees, ... 1336

Report of, ... 1335

When powers of Shade Tree Commission given to, ... 1332

Penalties for violation of regulations,

Assessment and collection of, ... 1340

Payable to treasurer, ... 1341

Shade Tree Commission,

Appointment of, compensation, term, ... 1331

Notice of meeting to consider work concerning trees, ... 1336

Power to establish, ... 1330

Powers of, ... 1333, 1334

Report of, ... 1335

Vacancies in, how filled, ... 1331

When Park Commission shall have powers and duties of, ... 1332

SHOWS, regulation of by township commissioners, ... 381

SIDEWALKS,

Grade for, power to establish separate and apart from grade of roadway, ... 1925

Power to establish grade of separate and apart from grade of roadway, ... 1925

SIDEWALKS, Cont.

See.

Townships of the first class,

Along highways leading to or connecting cities,

Acceptance of sidewalk constructed before passage of ordinance,	1013
Consent for construction of, when highway is turnpike road or State Highway, ...	1005
Construction of, by commissioners after failure to, by property owners, ...	1010
Cost of construction charged to property owners, collection of, ...	1010, 1011
Default by property owner when notice served on September 1st, ...	1009
Establishment of by ordinance, ...	1005
Notice to property owners to construct, service of, ...	1008
Ordinance for shall specify, ...	1007
Reconstruction of sidewalk constructed before passage of ordinance, expenses of, ...	1013
Repayment of township's share of cost of construction to property owner, ...	1012
Township may pay part of cost of construction, ...	1011
Width of, ...	1006

Along turnpike roads, State Highways or county roads,

Acceptance of sidewalk constructed before passage of ordinance, ...	994
Collection of cost of construction from owners, ...	993
Construction of, by commissioners after failure to, by property owners, ...	993
Cost of construction charged to property owners, ...	990, 993
Notice to property owners to construct, ...	992
Ordinance establishing shall specify, ...	991
Reconstruction of sidewalk constructed before passage of ordinance, expense of, ...	994
Service of notice to grade and construct, ...	992
Assessment and payment of damages for taking of property in construction of, ...	980
Collection of cost of grading, paving and curbing sidewalk, and penalty, when done by commissioners, ..	972, 982, 993, 1010, 1011
Cost and maintenance of, ...	960
County roads, power to lay out on, ...	980, 990
Grading, paving and curbing of,	
By commissioners upon failure by owners to, after notice,	971, 982
By ordinance, on petition of property owners, ...	970, 980
May be directed in towns and villages, ...	981
Grading, paving, etc., of,	
Cost and expense of, collection of, ...	1926-1930
Costs of viewers, payment of, ...	1929
Damages for, collection of, ...	1926-1930
Liens for, right to file not affected by appeal from assessment by viewers, ...	1930
Payment of damages, assessment on property benefited, duty of viewers, ...	1928
Validation of acts and work heretofore done, ...	1926

SIDEWALKS, Cont.

Sec.

Townships of the first class, Cont.**Grading, paving, etc., of, Cont.****Viewers,**

Appointment of to assess costs and damages, notice of meeting, ...	1926, 1929
Compensation of, payment by, ...	1929
Proceedings before, service of notices of, report, ...	1927
Reports of, confirmation of, appeal from, effect of appeals, ...	1930
Reports of, filing of, notice of, ...	1927
Liens for grading, paving, etc., right to file not affected by appeal from assessment by viewers, ...	1930
Notice to property owners to construct, ...	970
Power to construct, in, ...	960, 980, 990
Repair of, ...	1025
By commissioners upon failure of property owner to, after notice, collection of cost and penalty, ...	1026
Power to require, ...	1026
Service of notice upon property owner, ...	1027
Service of notices of viewers in proceedings to assess damages, ...	1927
State highways, powers to lay out, on, ...	980, 990
Turnpike roads, power to lay out, on, ...	980, 990
Validation of grading, paving, curbing and laying of sidewalks heretofore done, ...	1926
Width of, ...	960, 980

Townships of the second class,**Along highways through towns and villages,**

Expense of construction, ...	1041
Maximum proportion of taxes to be used in construction of, ...	1041
Power to construct, ...	1041

Along public highways,

Cost of construction and repair, ...	1040
Establishment of by supervisors, ...	1040
Width of, ...	1040, 1042

SIGN BOARDS, see ROADS, STREETS AND HIGHWAYS.

SINKING FUND, see INDEBTEDNESS.

SLAUGHTER HOUSES, townships of the first class, regulation of by township commissioners, ... 381

SPITTING, see PUBLIC HEALTH.

STALLION, see STRAYS.

STATE ASSOCIATION, see ASSOCIATION.

STATE DEPARTMENT OF HEALTH,**Approval of plans for construction of,**

Joint sewers, by, ...	1141
Water works by township in connection with a borough, ...	1206

Townships of the first class, approval of plans and surveys of water system in, by, ... 1181

STATE HIGHWAY DEPARTMENT,

Sec. 1

Commissioner of, to furnish blanks to treasurers of second class townships, ...	287
Consent of,	
To construction of sewers and drains in or under State highways,	1115
To construction of sidewalks along State highways, ...	990
Examination of accounts and records of township officers, ...	194
Lights on and along State highways, commission for, ...	381
Reports to be made to,	
By supervisors, ...	238
By township commissioners, ...	214
Representative of, to be eligible to membership in county association of township commissioners and supervisors, ...	197
Renewals for road and bridge construction, application blanks for to be provided by, ...	432-435
Road machinery, contracts for purchase of by supervisors, to be approved by, ...	386
Superintendents and road masters subject to rules of, ...	236

STRAYS,

Advertising of when owner does not appear, ...	1973, 1975
Boar,	
Impounding and sale of, after notice to owner, ...	1981
Running at large of, on public highway not permitted, ...	1980
Books containing entries of, to be open to public, no fee for search, ..	1978
Bull,	
Impounding and sale of after notice to owner, ...	1981
Running at large of, on public highway not permitted, ...	1980
Collection, cost of entry, advertising and keeping,	
From owner of, procedure, ...	1972
When owner is not found, procedure, ...	1972, 1973
Detention of, until cost of making record, advertising and keeping is paid by owner, ...	1971
Forfeiture by person taking up, for failure to give required notice, ...	1977
Jack,	
Impounding and sale of after notice to owner, ...	1981
Running at large of, on public highway not permitted, ...	1980
Mules included within provisions of acts relating to, ...	1976
Notice,	
Forefeiture for failure to give as required, ...	1977
On enclosed or improved land to be given owner or town clerk, penalty for failure to, ...	1971
On improved or enclosed lands, notice of to be given,	
Owner, penalty, ...	1971
Town clerk, when owner cannot be found, penalty, ...	1971
Penalty for failure to give notice to owner or town clerk, collection of,	1971
Ram,	
Impounding and sale of after notice to owner, ...	1981
Running at large of, on public highways not permitted, ...	1980
Recovery by owner, of proceeds of sale of, procedure for, ...	1973
Repeal of special acts relating to, ...	1979
Sale of where owner fails to pay costs or does not appear, notice, 1972, 1973, 1975	

STRAYS,—Cont.

Sec.

Stallion,

Impounding and sale of after notice to owner, ... 1981

Running at large of, on public highway not permitted, ... 1980

Swine, running at large of without rings and yokes, not permitted,
penalty, collection of, ... 1984-1986

Town clerk,

Compensation of for making entry of, after notice of, ... 1971

Notice of strays on enclosed land to be given to when owner cannot
be found, penalty, ... 1971

Penalty,

For asking or receiving fee for search in books containing
entries of, ... 1978

For not making entry of, ... 1971

SUBPOENAS, auditors may issue, ... 326

SUPERINTENDENTS, see OFFICERS AND EMPLOYEES.

SUPERVISORS, see also ROADS, STREETS AND HIGHWAYS.

Appeals from assessments on township property, by, ... 1550

Appointment of by township commissioners in first class townships. .. 213

Appointment to fill vacancy in office of, ... 180

Appropriation by, of tax received on harvesting of timber on auxilliary
forest reserves, ... 1606

Armories,

Appropriation for, by, ... 386

Water, light and fuel for to be furnished by, ... 386

Attendance at conventions of commissioners and supervisors, com-
pensation for, ... 196Auxillary forest reserves, appropriation by of taxes received on harvest-
ing of timber growing on, ... 1606

Banking institutions may act as treasurer of board of, ... 231

Books of,

Delivered to successors of, ... 233

Open for inspection, ... 233

Submitted to township auditors, ... 233

Burial grounds to be taken charge of by, when a nuisance, ... 2117

Canada thistle, duty to cut and destroy.

After failure of landholder to, ... 1988

When growing along highways, and on mountain or unseated land, 1989

Compensation of, ... 714

Auditors to determine amount of, ... 235

When not acting as superintendents or road masters, ... 235

When overseeing or working on road, ... 235

Corporate power of townships vested in, ... 386

County associations of, formed by, ... 195

Division of township into road districts, by, ... 234

Duties of, ... 241

Election and term of, ... 141, 145, 146

Election of in consolidated townships, ... 69

Extortion by from travelers on public highway prohibited, ... 845

Fire hydrants, placing of, by, ... 386

Highway material and machinery to be purchased by, ... 386

Highways, contracts for construction of to be approved by State High-
way Department, ... 386

Indebtedness certificates, issue of when highway funds are exhausted, 436

Lockups, erection of after election on question of, ... 1250

SUPERVISORS.—Cont.

Sec.

Meetings of board of.

Expenses of, how paid, ...	232
Minutes of, to be kept, ...	233
Place of, ...	231
Quorum for, ...	232
Time of, ...	231, 232

Memorial Day services, appropriation for, by, ... 386

Names and addresses of to be certified to State Highway Department, 1881

National Guard, lands for use of to be taken by eminent domain, ... 386

Not to be interested in purchases or contracts relating to roads or
bridges, ... 239

Number of, in townships of the second class, ... 230

Officers of board of, ... 231

Organization of board of, ... 231

Penalty collected for cutting down shade trees to be paid to, ... 1602

Power to set aside or acquire land for playgrounds, playfields, gymna-
siums, public baths, swimming pools or indoor recrea-
tion centers, ... 2041

Powers and duties of, ... 386, 716

Record of shade trees for which abatement of taxes has been allowed,
to be kept by, ... 1603

Reports to be made to State Highway Commissioner, by, ... 238

Rewards for road and bridge construction,

Application for, to be made by, ... 432-435

Withholding of, for neglect by, ... 437

Road.

Affairs in charge of, in second class townships, ... 230

Improvement and repair for definite period may be contracted for,
by, ... 237

Magazines may be subscribed for, by, ... 386

Statement of expenditure of State rewards to be furnished to State
Highway Department by, penalty for neglect, ... 1879

Supervision by, of playgrounds, playfields, gymnasiums, public baths,
swimming pools, indoor recreation centers, ... 2042

Taxes.

Abatement or exoneration of, to be made by, ... 436

Amount necessary for road purposes to be estimated by, ... 420

Duplicate of to be delivered to township collector, ... 423

Expense incident to collection of, to be adjusted by, ... 429

Fire house and fire apparatus, levy of for, ... 421

Lighting highways, levy of, for, ... 421

Lockup, levy of, for building of, ... 421

Special levy directed by court, to pay deficit, ... 422

To be levied upon all property and occupations, by, ... 421

Townhouse, levy of, for erection of, ... 421

Townhouses,

Power to borrow money to procure ground for and erect, ... 1221

Power to procure ground for and erect, ... 1220

Trust company may act as treasurer of board of, ... 231

Vacancy in office of, filling of, ... 180

Violation of provisions of Township Code by, ... 240

Watering troughs, erection of, by, ... 386

Work on roads by, not prohibited, ... 234

SWIMMING POOLS, erection, maintenance and regulation of, ... 2041-2047
 SWINE, see STRAYS.

TAX LIENS, see TAXATION; Municipal Tax Liens.

TAXATION,

Assessments,

Appeal from by aggrieved person, ...	1551
Appeal from by township authorities, ...	1550
Filing of bond on appeal from, may stay proceedings for collection, form of bond, ...	1552, 1553
Bond of collector of special taxes, ...	1560
Book containing names of taxables, to be kept by tax collector, ...	1565
Burial places not subject to tax or tax claims, ...	1609
Collection of by county treasurer, compensation for, ...	1574
Collection of taxes, stayed by filing of bond on appeal from assessment, ...	1552
County property not subject to tax or tax claims, ...	1609
Deductions by employers of amount of taxes due, from wages of unnaturalized residents, notice to, penalty, ...	1583, 1584
Delinquent taxes, return of to county commissioners, sale by county treasurer, additional penalty for, ...	1591, 1592
Deputy tax collector may be employed by tax collector, ...	1567
Duplicates, when issued, ...	1561
Executors of tax collectors to collect unpaid taxes during life of warrant, ...	1568, 1569
Exonerations to be made by authorities, ...	1578
Forest or timber trees, allowance of rebate of taxes for, ...	1604
Foreign fire insurance companies, State tax on, distributed to townships, ...	1674
Forfeiture by tax collector for failure to perform duties, ...	1579
In townships of the first class,	
Abatement of taxes to be made by township commissioners, ...	405
Conveyances of real estate in, to be entered of record, ...	303
Duplicates, when issued, contents of, ...	1556, 1561
Firehouses, tax for, ...	397
Retention of cost of printing and postage incident to collection of taxes, by treasurer, ...	404
Revision of assessments during years between triennial assessments, ...	1548
Roads and bridge purposes, amount of taxes levied for, to be reported to State Highway Department, ...	214
Special tax for payment of deficit, levying of, ...	398
Tax duplicate, to be delivered by commissioners to treasurer, ...	399
Tax for township purpose to be levied on all property and occupations, ...	397
Tax levy to cover appropriations, ...	390
Taxes to be collected only by treasurer, ...	274
Townhouse, tax for, ...	397
Township purposes, tax for, ...	397
Treasurer to give notice of receipt of tax duplicate, ...	400
Treasurer to give notice to taxables of amount of taxes due, ...	401
Trees, tax for, ...	397
Unpaid taxes, collection of by treasurer, ...	403
In townships of the second class,	
Abatement of taxes, ...	423

TAXATION—Cont.

Sec.

In townships of the second class, Cont.

Abatements or exoneration of taxes to be made by supervisors, ...	430
Accounts of tax collectors to be settled by auditors, ...	431
Expenses, estimate of for road purposes, to be made by supervisors, ...	420
Fire apparatus and fire house, levy of tax for, ...	421
Notice of receipt of tax duplicate to be given by tax collector, ..	424
Penalty for failure to pay before October first, ...	423
Report of taxes for road purposes to be made by supervisors to State Highway Commissioner, ...	238
Road taxes collectible in cash, ...	421
Taxes,	
Collected, to be paid to treasurer monthly, ...	428
For fire protection to be received by treasurer, ...	386
For lighting purposes, to be received by treasurer, ...	386
For township purposes, to be levied upon all property and occupations, ...	421
Joint tenant of seated land, payment of proportionate part of taxes due, by, ...	1577
Money owing by solvent debtors, not taxable, ...	1534
Monthly returns by tax collectors, penalty for not making, ...	1572, 1573
Municipal Tax Liens,	
Addition of names,	
To writ of scire facias by sheriff, ...	1616
When suit is brought by scire facias, direction to prothonotary, ...	1615
Advertisement of sale, ...	1626
Affidavits to petitions, answers, etc., ...	1632
Amendments to claims, petitions, answers, etc., ...	1631
Amicable scire facias,	
Agreement by parties upon, ...	1615
To revive judgement on, ...	1619
Appeal from judgment, bond, supersedeas, ...	1622
Appeals to Supreme and Superior Court, ...	1635
Apportionment of, among separate properties affected by, ...	1614
Attorneys' commissions,	
Amount allowed in collection of, ...	1617, 1618
Assessment of by prothonotary on entering judgment, ...	1617
Claim for taxes, filing of, life of lien, revival of, ...	1610
Claim to be filed, form of, ...	1611
"Claimant," definition of, ...	1607
Claims to which act applies, ...	1636
Collection of, procedure, ...	1607-1636
Compulsory non suit, effect of, ...	1618
Costs, recovery of by execution, ...	1621
Deed of sheriff, validity of, ...	1629
Divesting lien, by judicial sale, ...	1629
Enlarging of time for filing affidavits of defense, answers, replications, etc., ...	1631
Evidence, tax claim to be, ...	1618
Executions,	
Against quasi-public corporations, ...	1628
By levavi facias, form of, ...	1626

TAXATION,—Cont.

Sec.

Municipal Tax Liens.—Cont.

Facts averred and not denied, taken as true, ...	1632
Fee of prothonotary for searches, ...	1624
Filing of, ...	1610
Form of revival of,	
By averment and suggestion, ...	1610
By scire facias, ...	1610
Form of writ of scire facias, for suit on, ...	1615
Habere facias possessionem, writ of to give sequestrator possession of property, ...	1622
Indexing of proceedings, ...	1623
Intervention by interested party in proceedings for, ...	1613
Judgments,	
By default, opening of, ...	1631
Entry of, if no affidavit of defense is filed, ...	1617
For want of sufficient affidavit of defense, ...	1617
Motion for, by defendant, ...	1617
Recoverable only out of proceeds of sale of property bound by,	1621
Revival of by amicable scire facias, ...	1619
Revival by scire facias, form of, ...	1619
To be final and conclusive after delivery of sheriff's deed, ..	1629
Levari facias, form of, ...	1626
Lien of taxes,	
May be filed against property tax and, ...	1609
Priority of, ...	1608
Liens,	
Disposition of, ...	1607
Priority of, ...	1629
When not divested by judicial sale, ...	1629
Life of, ...	1610
Locality index of tax claims to be kept by prothonotary, ...	1624
Loss of, by failure to file claim, ...	1610
"Municipalities,"	
Definition of, ...	1607
Right to purchase property at sale, ...	1629
Notices, service of, ...	1633
Opening judgments entered by default, ...	1631
"Owner," definition of, ...	1607
Payment of lien on one property when several are affected by, effect of, ...	1614
Persons interested in property affected by, intervention by, ...	1613
Petitions, service of, ...	1633
Priority of liens, ...	1629
"Property,"	
Definition of, ...	1607
Description of in claim for lien, ...	1612
Not subject to tax or tax claims, ...	1609
Public charity, institutions of, not subject to tax or tax claims, ..	1609
Purchase of property by municipalities, ...	1629
Quasi-public corporations, executions against, ...	1628
Redemption of property by owner, ...	1629, 1630
Religious worship, places of, not subject to tax or tax claims, ..	1609
Replications, contents of, ...	1632

TAXATION,—Cont.

Municipal Tax Liens,—Cont.

Revival of, ...	1610
Revival of judgment,	
By amicable scire facias, ...	1619
By scire facias, form of, ...	1619
Rules,	
Return of, ...	1632
Service of, ...	1633
Sale of property, procedure where bid insufficient, ...	1629
Sale, stay of, by payment of claim, ...	1629
Scire facias,	
Form of, ...	1615
Return of, ...	1616
To revive form of, ...	1610
To revive judgment,	
Form of, ...	1619
Service of, ...	1620
Service of by sheriff, ...	1616
Security, sufficiency of, approval, substitution, ...	1634
Service of notices, petitions and rules, ...	1633
Sequestrator of rents and profits of property bound, appointment of after judgment, ...	1622
Stay of proceedings, security, ...	1625
Stay of sale by payment of claim, ...	1629
Substitution of interested party as defendant in proceedings, ...	1613
Suggestion to revive, form of, ...	1610
Suit by writ of scire facias, form of, ...	1615
Tax liens, definition of, ...	1607
Taxes,	
Definition of, ...	1607
Lien of, priority, ...	1608
Upset price to be fixed by plaintiff, ...	1627
Validation of certain claims, ...	1636
Verdict in excess of amount admitted by defendant, effect of, ...	1618
Names, unlawful to add to duplicate return of assessor, penalty, ...	1580
Notice by tax collector to county treasurer, contents of, penalty, ..	1557, 1559
Office hours of tax collector,	
During time when discount allowed, ...	1566
For collection of taxes, notice of to county treasurer, ...	1557
Payment over by tax collector of taxes collected, penalty for not mak- ing, ...	1572, 1573
Penalty,	
For failure on part of tax collector to furnish tax receipt, ...	1571
For failure to pay taxes within sixty days, ...	402
Power of tax collector in collection of taxes, liabilities and penalties, ..	1564, 1585
Rebates,	
For forest or timber trees, claim for, amount of, ...	1604
For planting of shade or forest trees, amount of, method of plant- ing, ...	1597-1600
Receipt for taxes, furnishing of to tax payer by tax collector, contents of, ...	1579

TAXATION,—Cont.

Road taxes, collection of by levy on goods of tenant, ...	1586
Shade trees, rebates of taxes for planting of, amount of, method of planting, ...	1597-1600
Special taxes, collection of, bond of collector, ...	1590
State property not subject to tax or tax claims, ...	1600
Suit for collection of taxes not to be brought by tax collector during life of warrant, ...	1589,1590
Tax collectors' address book to be kept by county treasurer, contents of, ...	1558
Tax sales of lands of tenants in common to pass title only of interest of owners failing to pay taxes, ...	1575-1577
Taxes, unlawful to receive from person not assessed and returned, penalty, ...	1580
Tenants, goods of, liable for payment of, All taxes, ...	1587,1588
Road taxes, ...	1586
Timber on auxillary forest reserves, tax paid upon harvesting of, bond, application of tax, ...	1606
Triennial assessments, to be made in townships of the first class by the assessor and assistant assessors, ...	1535
Undivided interest of one owner in land cannot be sold for non-pay- ment of taxes due from other owners, ...	1575,1576,1577
Unmaturalized resident, subject to payment of taxes, collection of, ...	1581,1584
Unseared land, Joint tenant or copartner of may pay his proportionate part of taxes due thereon, ...	1596
Taxes upon not to be collected by tax collectors, ...	1594
Taxes upon to be paid within one year, interest, ...	1595
Warrant for collection, Issuing of, ...	1561
Life of, ...	1562,1563
TOOLS, purchase of in first class townships, ...	381
TOWNCLERK, see OFFICERS AND EMPLOYEES.	
TOWNHOUSE, tax to be levied for erection of, in second class townships, ...	421
TOWNSHIP COMMISSIONERS, see COMMISSIONERS.	
TOWNSHIP LINES AND BOUNDARIES, Altering and ascertaining of, ...	70
Adjustment of rights and liabilities in cases of altering, ...	73
Procedure in, ...	71, 72
Ascertainment and establishment of d'sputed, ...	80
Procedure for, ...	81,82
Compensation of commissioners, surveyors, artists and chain carriers in fixing of, ...	90
Marking of, ...	83
Stream as boundry, ...	95
TOWNSHIP PRISONERS, maintenance of, ...	2146
TRANSIENT MERCHANTS, see LICENSE AND LICENSE FEES.	
TREASURER, see OFFICERS AND EMPLOYEES.	
TREASURER OF ASSOCIATION OF TOWNSHIP COMMISSIONERS AND SUPERVISORS. see ASSOCIATION OF TOWN- SHIP COMMISSIONERS AND SUPERVISORS. Treasurer.	

VACANCIES IN OFFICE, see OFFICERS AND EMPLOYEES. SUPERVISORS; COMMISSIONERS; ELECTIONS.

VAGRANTS, arrest and detention of, ... 381

VEHICLES, see MOTOR AND OTHER VEHICLES.

VIADUCTS, see BRIDGES AND VIADUCTS.

WARDS,

Court to fix number of in first class townships, ... 34

Creation and division of in townships of the first class, ... 33, 34

Procedure for, ... 33

Division of into more than one election district, ... 34

Election districts in first class townships to constitute, ... 34

Election districts in, to be numbered, ... 34

Lines and boundaries of may be fixed and altered, ... 33, 34

Procedure for, ... 33

Numbering of according to election districts in, ... 34

WATCH HOUSE, see LOCKUP.

WATER SUPPLY AND WATER WORKS,

Commissioner of water works,

Application to court for appointment of, ... 1207

Ordinance of commissioners to avail themselves of, ... 1207

Resolution of supervisors to avail themselves of, ... 1207

Construction, acquisition and maintenance of in connection with a borough, ... 1205

Appointment of commission of water works, ... 1207

Approval of plans by State Commissioner of Health, ... 1206

Forestry reservation, impounding water upon, ... 2011

Needs of township or inhabitants to be supplied by water company obtaining its supply from within corporate limits thereof, procedure, ... 2009, 2010

Townships of the first class,

Approval of source of supply by State Health Department, ... 1181

Assessment of damages for taking or injuring property in extending system of distribution, ... 1183

Cemeteries, etc., not to be taken, injured or destroyed in extension of system of distribution, ... 1182

Contracts to supply water with adjoining municipalities, ... 1180

Distribution of water,

Acquired from adjoining municipality, regulation of by ordinance, ... 1181

Bond to be filed upon taking of property for use in system for, ... 1183

Damages for taking of or injury to property, Payment of, ... 1190

Procedure for assessment of, ... 1183-1190

Power,

To make contracts with adjoining municipalities, for, ... 1180

To occupy highways for, ... 1182

To take and injure private property in extending of system of, ... 1182

WATER SUPPLY AND WATER WORKS,—Cont.

Townships of the first class,—Cont.

Distribution of water,—Cont.

Viewers,

Appointment and duties of, ... 1181-1186

Costs of, ... 1189

Report of, ... 1186

Viewers' reports, confirmation of, demand for jury trial, appeal
from, ... 1187, 1188

Eminent domain, exercise of to extend system of distribution, .. 1182

Private property, right to occupy in extension of system of dis-
tribution, ... 1182State Highways, permit from State Highway Department neces-
sary before occupation of, ... 1182WATERING TROUGHS, see also ROADS, STREETS AND HIGH-
WAYS.

Erection and repair of, by township commissioners, ... 381

Erection of by supervisors, ... 386



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